

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRSThe meeting was called to order by Senator Bill Morris at
Vice- Chairperson11:00 a.m. ~~pm~~ on February 25, 19 83 in room 254-E of the Capitol.

All members were present except: Senator Reilly, who was excused,

Committee staff present: Fred Carman, Assistant Revisor of Statutes
Russell Mills, Legislative Research
Emalene Correll, Legislative Research
June Windscheffel, Secretary to the Committee.Conferees appearing before the committee: Senator Merrill Werts, Joint Committee on Administrative
Rules and Regulations
Tuck Duncan, Kansas Wine & Spirits Wholesalers Assn., Inc.
Tom Green, Kansas Retail Liquor Dealers Association
Thomas J. Kennedy, Director, Alcoholic Beverage Control
Bill Strukel, Alcoholic Beverage Control
Tom Coleman, Alcoholic Beverage Control
Hank Booth, General Manager, Lawrence Broadcasters, Inc.
The Rev. Richard Taylor, Kansas for Life at its BestSCR1611 - revoking certain rules and regulations of board of technical professions.Senator Morris introduced Senator Werts who spoke in favor of SCR1611. He said that the joint committee reviewed the rules of the Board of Technical Professions in 1980 and a number of concerns were expressed. He said that no changes have been made up through the filing period, and as a result the joint committee introduced this resolution to get the attention of the board. He said that there was unanimous agreement of the joint committee that this be introduced.SCR1613 - modifying rules and regulation of secretary of revenue, alcoholic beverages, trade practices.Senator Werts also spoke in favor of this resolution. He said that SCR1613 was introduced by the Joint Committee on Administrative Rules and Regulations, and that they had worked in collaboration with the Alcoholic Beverage Control. He said that essentially the mandatory changes in KAR 14-10-1a, is in order for the language to conform with the language of the Federal Bureau of Alcohol, Tobacco and Firearms Regulations.The Chair recognized Tuck Duncan of the Kansas Wine & Spirits Wholesalers Association, Inc., whose prepared statement is attached. (Attachment #1: this includes Mr. Duncan's Memorandum of February 25, to the Senate Committee on Federal and State Affairs, plus an information packet regarding SCR1613.) The Memorandum states his opposition to SCR1613 and makes certain requests from the committee regarding merchandising practices in the industry.

Tom Green, of the Kansas Retail Liquor Dealers Association, spoke next. He had no written statement but said that they do not have a problem with the current regulation. They do not have a position on point of sale and do not want to get in the position of having to "put up in stores all this stuff if we don't want to." They do feel regulations are necessary to prevent any undue burdens upon the retailers.

Tom Kennedy distributed copies of his Memorandum to the committee concerning SCR1613, and commented that the Joint Committee and the Director of the Alcoholic Beverage Control both recognized the conflict in the statements in the regulation and agreed that a change should be made to correspond to applicable regulations. (Memorandum is Attachment #2).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on February 25, 1983.

SCR1613 - Continued

Bill Strukel appeared and said that there is disagreement between the industry and the Alcoholic Beverage Control. He said the availability of items is not for every liquor store in the state, and he didn't think that was the real intent of point of sale when it was allowed in the state. When the question was asked "Why don't you just outlaw point of sale if you want to make everyone even?" Mr. Strukel said that he would agree.

Tom Coleman spoke to the fact that the question is what the law is. He handed out copies of the Kansas Statutes Annotated, dealing particularly with 41-702 and 41-703. He said that the state law is in direct conflict with Mr. Duncan's request, and what they are preventing is the transfer of something of value under the guise of the point of sale. Coleman stated that only selected retailers get premiums because of the merchandise quota. He said they are violating the tier system and they are inducing the retailer to buy their items in bulk. The following are made a part of the record: (KSA41-702 and 41-703, Attachment #3; letter from Attorney General Stephan, Attachment #4; Proposed Changes to A.B.C. regulation 14-10-1, Attachment #5; definition of "Furnish" from Black's Law Dictionary, Attachment #6). He further commented that what they have done on SCR1613 is to conform as closely to the BATF regulations as the state allows but that state law prohibits advertising specialties.

SCR1615 - Advertising limitation for alcoholic beverages.

General Kennedy distributed his Memorandum to the committee, dated February 25, 1983 (Attachment #7) concerning SCR1615, which states if adopted it would modify KAR 14-8-2 concerning restrictions in advertising alcoholic liquor and KAR14-8-11 concerning advertising by radio, television, motion pictures, gifts prohibited. This regulation will in effect bring the matter of price and brand advertising and the matter of broadcasters being able to advertise, before the legislature for a review, a reaffirmation, or a revision of legislative intent.

The Chair recognized Hank Booth, General Manager of Lawrence Broadcasters. His prepared statement is attached and a part of the record. (Attachment #8) He spoke in favor of SCR1615, with the comment that it would, if enacted, equitably treat all members of the media.

The Reverend Taylor appeared, and copy of his statement is attached. (Attachment #9) He stated that advertising has one purpose: to attract customers to the store. He further stated that point of sale material and product displays have one purpose: to encourage impulse buying.

Senator Pomeroy moved that the Minutes of February 23, 1983, be approved. 2d by Sen. Meyers. Motion carried.

The meeting adjourned at 12:00 noon.

February 25, 1983
Attachment #1

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

To: Senate Committee of Federal and State Affairs

From: R.E. "Tuck" Duncan
General Counsel, K.W.S.W.A.

RE: SCR 1613

Date: February 25, 1983

I rise in opposition of SCR 1613.

We ask that this committee either substitute for SCR 1613 a regulation that is compatible with the regulations of the B.A.T.F. regarding merchandising practices, rejecting K.A.R. 14-1-1, 14-10-1a, 14-10-1b, and 14-10-2 and thereby allow the industry to conform to national practices in this area.

In the alternative, we would request that the committee permit the industry to continue the trade practices as authorized in 1979 and currently in effect, thereby rejecting revised 14-1-1, 14-10-1a, 14-10-1b, and 14-10-2, and reinstating 14-10-1 and 2 as operative today.

As stated to the Joint Committee on Rules and Regulations:

"Ironically, the Division of Alcoholic Beverage Control has sent to the legislature at a time when deregulation is being urged by the post audit division, a rule more restrictive and contrary to the combined desires of retailers and distributors."

When the legislature enacted the brand franchise distribution system, which was designed to provide competition at the wholesale tier of this industry, it was recognized that certain trade practices, as enumerated in the current 14-10-1 and 2, were vital to foster this element of competition. We have competition among wholesalers, and it has been a positive step for this industry.

At a time when the market is "flat" in sales, enacting more restrictive trade practices seems counter-productive to the economic stability of the industry. And, it is difficult to discern how the consumer's interest is served when we are restricted in providing consumer information in the retail store.

For you further information, and as background material, we are providing to the committee copies of correspondence, the B.A.T.F. regulations and the K.A.R.s referenced herein.

Your favorable consideration of our requests will be most appreciated, and if we can provide additional information to assist your work, please do not hesitate to call upon us.

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

February 25, 1983

February 25, 1983
Attachment #1

INFORMATION PACKET REGARDING SCR 1613

CONTENTS:

1. Letter to Joint Committee on Administrative Rules and Regulations
December 22, 1982
2. Letter to Thomas J. Kennedy, Director, Alcoholic Beverage Control,
November 18, 1982 with attachments:
3. A: Letter to Thomas J. Kennedy, Director, A.B.C.
 July 16, 1982

 B: Letter to Thomas J. Kennedy, Director, A.B.C.
 September 28, 1982

 C: PROPOSED CHANGE FOR K.A.R. 14-10-1
 PROPOSED CHANGE FOR K.A.R. 14-10-2

 D: Proposed change for K.A.R. 14-8-4
4. B.A.T.F. REGULATIONS REGARDING MERCHANDISING PRACTICES
 (with circular regarding modifications therein)
5. K.A.R. 14-1-1 (effective May 1, 1983)

 K.A.R. 14-10-1a (effective May 1, 1983)

 K.A.R. 14-10-1b (effective May 1, 1983)

 K.A.R. 14-10-2 (effective May 1, 1983)

R.E. "Tuck" Duncan
General Counsel, K.W.S.W.A.

R. E. "TUCK" DUNCAN

ATTORNEY AT LAW

SUITE 101, 629 QUINCY

TOPEKA, KANSAS 66603

913-354-9110

December 22, 1982

The Honorable Merrill H. Werts, Chairman
Joint Committee on Administrative Rules and Regulations
The Kansas Senate
1228 Miller Drive
Junction City, Kansas 66441

Dear Senator Werts:

At your scheduled January 3, 1983, meeting of the Joint Committee on Administrative Rules and Regulations, it is my understanding that your Committee will review the regulations filed by the Division of Alcoholic Beverage Control, Department of Revenue, State of Kansas.

It is my intention to appear and give testimony regarding these regulations on behalf of the Kansas Wine and Spirits Wholesalers Association, Inc. (KWSWA). In an effort to provide your Committee with the necessary background information and yet keep my presentation concise, I am forwarding to you certain documentation which I believe will assist in your work.

Let me preface our concerns by stating that they have been narrowed over the path of this process to the single issue of "point-of-sale" materials used by retail liquor licensees in their stores to inform and educate consumers regarding the brands they sell.

Ironically, the Division of Alcoholic Beverage Control has sent to the legislature at a time when deregulation is being urged by the ~~po~~ audit division, a rule more restrictive and contrary to the combined desires of retailers and distributors.

Enclosed in this packet is a copy of the Sunset Audit of the Division of Alcoholic Beverage Control. That audit is a detailed study

The Honorable Merrill H. Werts
December 22, 1982
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of the involvement of the State in certain trade practices, some of which are counter-productive to the efforts of the State in its revenue collection efforts.

The revisions of K.A.R. 14-1-1, 14-10-1a, and 14-10-2 are "more of the same" and contrary to the progressive needs of this industry.

As additional background material, I am enclosing a copy of the packet of information provided to the Director of Alcoholic Beverage Control and the members of the A.B.C. Board of Review.

I know that your Committee will be understanding towards our concerns, and know it will give us appropriate consideration. If I can answer any questions you have in this area in advance of the hearing, please do not hesitate to call upon me.

Thank you for your attention to and consideration of this matter.

Sincerely,

R. E. "Tuck" Duncan
KWSWA General Counsel

RED:jp

cc: The Honorable J. Santford Duncan
2355 S. Hillside
Wichita, Kansas 67211

R. E. "TUCK" DUNCAN
ATTORNEY AT LAW
SUITE 101, 629 QUINCY
TOPEKA, KANSAS 66603

913-354-9110

November 18, 1982

Thomas J. Kennedy
Director
Alcoholic Beverage Control
Kansas Department of Revenue
State Office Building
Topeka, Kansas 66625

Dear Director Kennedy:

On behalf of the Kansas Wine and Spirits Wholesalers Association I write with regard to concerns of all Kansas wholesalers about several of the regulations promulgated by your agency and upon which public comment has been solicited.

Before I detail each of the concerns, I believe a brief review of our previous discussions on this topic is appropriate.

On June 22, 1982, you and members of your staff met with the association. Minutes of our meeting reflect that:

"(t)he Director then asked Bill Strukel to discuss the problem of point of sale and product sales (Director Kennedy) asked KWSWA to let him know how the wholesalers felt about the overall situation."

On July 20, 1982, you made a thorough and detailed presentation to the legislative Joint Committee on Administrative Rules and Regulations. At that meeting Kansas liquor retailers and licensed wholesalers suggested to that committee that the division adopt B.A.T.F. Regulations for Merchandising. In the final analysis, the joint committee expressed concerns on two regulations which affect wholesalers: (1) it asked the A.B.C. to review the seven (7) day delivery requirement; and (2) it requested the A.B.C. to propose legislation to authorize the director to issue regulations regarding point of sale materials. (Albeit, the Attorney General, already believes that you have ample authority).

Thomas J. Kennedy
November 18, 1982
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The public session was preceded by several meetings between yourself, your staff and myself. One such meeting, I summarized in correspondence dated July 16, 1982. I have attached a copy of that letter hereto in order not to be repetitive (attachment "A"). While we made a concerted effort to limit our "priority concerns" the proposed regulations address three of the four concerns identified in my letter. One solution proposed is totally unacceptable and a second we believe has been drafted in such a manner as to be more restrictive than either the division intended or the wholesalers desired. We are pleased that the agency concurred with extending the period before cancellation of purchase orders by an additional thirty (30) days; and we are disappointed that the division took no action on our request to move the date of delivery for price books closer to the month's end.

On September 28, 1982, I again formally corresponded with your office on the regulatory concerns of wholesalers (attachment "B"). At that time we understood that we would have an opportunity to fully review the proposed point-of-sale regulation and delivery regulation. On October 27, 1982, I reviewed with you the contents of your proposed regulations, although no copies of same were yet available. On November 8, 1982, representatives of the association met with you again advising of our concerns, and you were provided proposed changes to K.A.R. 14-10-1 and 14-10-2 (attachment "C"). On Monday, November 15, 1982, I received a complete set of the proposed regulations. They were reviewed with all members of the association on November 16, 1982, and the association is now prepared to suggest as follows:

1. That inasmuch as the position of both the Kansas licensed retailers and licensed wholesalers of alcoholic beverages is that the state adopt the regulations of the B.A.T.F. regarding merchandising, and inasmuch as the backbone of an effective brand competition system depends upon the marketing of products as we have been permitted to so do for two (2) years, and inasmuch as deregulation of such matters is the appropriate public policy for these times, and inasmuch as the B.A.T.F. has heretofore conducted extensive hearings on matters relating to merchandising practices among industry matters, now is the time to submit for the Alcoholic Beverage Control Board of Review's consideration the regulation as we have proposed it. My reading of the laws of the procedure for adopting rules and regulations does not prohibit the Board from considering more than one alternative. In fact, you have presented more than one

Thomas J. Kennedy
November 18, 1982
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alternative -- keep the current regulation, revoke same, or adopt the revised 14-10-1a and 14-10-1b. (And as a procedural note, we think it patently unfair to ask the Board to amend K.A.R. 14-1-1 and/or revoke 14-10-1 without first looking at the alternatives (1a, 1b) and/or our proposed revision.)

2. That 14-4-14 be revised as set out in attachment "C". Quite candidly as I stated in my letter of September 28, 1982:

"... the regulation regarding delivery and placement of orders (1a) really counterproductive to the wholesaling system. Wholesalers should be allowed to establish their own policies in this area...."

3. That 14-8-4 be amended as set out in attachment "D", or alternatively that 14-10-1, as revised per our recommendation, be amended to include the following:

"Notwithstanding any other provisions of these regulations to the contrary, price information on point-of-sale materials or product displays shall not be restricted to any size dimensions."

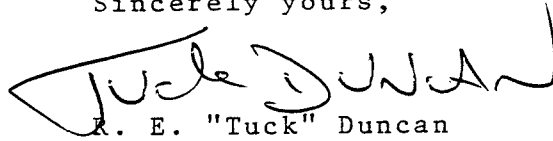
In summary, the association hopes the Division consider that the revisions we propose assist not solely the industry, but more importantly the consumer; while allowing the industry to conduct a business generating needed state revenues. And no less in importance is the fact that the items we have reviewed are the areas identified by the legislative Joint Committee on Administrative Rules and Regulations requiring modification.

The revisions we propose are consistent with the transition being experienced in the wholesale tier of alcoholic beverage industry in Kansas and with good public policy.

Thomas J. Kennedy
November 18, 1982
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Your attention to these matters is most appreciated.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Tuck Duncan". The signature is written in a cursive, somewhat stylized font with a large initial "T".

R. E. "Tuck" Duncan
Attorney for Kansas Wine and
Spirits Association, Inc.

RED:jc
CC: Chairman and Members,
Alcoholic Beverage Control Board of Review

ATTACHMENT "A"

R. E. "TUCK" DUNCAN
ATTORNEY AT LAW
SUITE D
112 EAST 7TH STREET
TOPEKA, KANSAS 66603
913-354-9110

July 16, 1982

Thomas J. Kennedy
Director, Alcoholic Beverage Control
Kansas Department of Revenue
5th Floor State Office Building
Topeka, Kansas 66625

Dear Director,

It was a very productive session Wednesday with you and members of your staff (Mr. Strukel, Mr. Coleman, and Ms. Mohler) regarding the rules and regulation concerns of the Kansas Licensed Wholesalers.

To summarize our position, it is not my intention to present any controversial matters to the joint committee reviewing alcoholic beverage control regulations. We will attend, and if I can be of assistance in responding to individual legislator's questions, I will be pleased to so respond.

With regard to our concerns which you and your staff indicate will be reviewed and entertained during the "work-up" of new regulations this fall, they can summarized as follows:

1. The point of sale regulation should be rewritten to meet the joint concerns of wholesalers and the division.
2. The requirement for sending pricebooks by registered mail or acquiring a return receipt should be examined and hopefully eliminated. Further, it would be desirable to move the delivery date closer to the end of a given month. Whether this be the 25th, 26th, or 30th, is a policy question--but we would prefer such date to be as close to the end of the month as possible.
3. We believe that the time before purchase orders/back-orders are cancelled should be extended to the end of the second month after issuance.
4. Further, we believe that the regulation relating to delivery to retailers and ordering from wholesalers should be altered to permit second-day delivery, i.e. retailers order by 5:00 p.m. two days prior to the date of delivery.; and should be modified to authorize delivery once every 14 days.

The fact that we have identified these as priority concerns should not be interpreted as meaning that there are no other areas of concern. We understand, however, that it is best to look at those areas of pressing importance and to modify them without trying to "rewrite" all of the rules.

I would be pleased to discuss any of these matters with you again, should you desire. Further, I am most appreciative of your affording me an opportunity to present these views to you and your staff on behalf of Kansas Licensed Wholesalers.

Again, thank you for your attention to and consideration of these matters.

Sincerely,

R.E. "Tuck" Duncan

RED/vjb

c.c. Greg Lux

ATTACHMENT "B"

R. E. "TUCK" DUNCAN

ATTORNEY AT LAW

SUITE 101, 629 QUINCY

TOPEKA, KANSAS 66603

913-354-9110

September 28, 1982

Thomas J. Kennedy
Director A.B.C.
Kansas Dept. of Revenue
5th Floor, State Office Bldg.
Topeka, Kansas

Dear Director,

As a follow-up to our conversation today regarding the rewrite of various rules and regulations of the Alcoholic Beverage Control, I want to reaffirm the interest of the Kansas Wine and Spirits Association in having revisions on the following subject matters.

First, it is our hope that the Department will extend the cancellation, by an additional thirty days for purchase orders. As discussed with your staff earlier this year we think this will alleviate some of the problems experienced by premature cancellation of purchase orders.

Additionally, we would hope that the division would not require wholesalers to deliver their price books until the last day of the month preceding the effective date of said book. The reasons for this are several, including but not limited to, the fact that retailers then delay purchases in a given month in anticipation of "deals" which may be ahead in the subsequent month. The delivery of the price book ten days in advance of the month is counter-productive to wholesale operations. Further, there is no reason for a retailer to have that book in their hands any earlier since they cannot change the prices as listed in the book until the first day of the month in which said book is effective.

Thirdly, we do hope that you will give serious consideration to extending the current delivery period from once every seven days to once every fourteen days. In addition to the problems experienced by Monday/Holiday deliveries, there are territories in the state in which the cost of delivery cannot support anymore frequent deliveries. In connection with revision of the transportation and delivery regulation I understand you are giving serious consideration to the matter of second-day delivery. That is, that as an option wholesalers may take orders for deliveries which would not occur until the second day after the placement of the order. Again, with the consolidation of warehouses this becomes a cost effective item for the wholesale industry.

I would be remiss if I did not indicate the long-standing position of the Association that the regulation regarding delivery and placement of orders really counter-productive to the wholesaling system. Wholesalers

should be allowed to establish their own policies in this area, and the competition of the market-place should dictate what the requirements would be. Therefore, elimination of this regulation is really most appropriate, but in lieu thereof, the aforementioned modifications would be appreciated.

Finally, it is my understanding that your staff is still working on a draft of a point-of-sale regulation. It is my understanding that this will be renamed merchandising regulation and will encompass matters in addition to point-of-sale materials. I would appreciate a copy of your proposed regulation as soon as it becomes available.

Again, thank you for your courtesy and consideration of these matters.

Sincerely,

R.E. "Tuck" Duncan

c.c. Greg Lux Pres. K.W.S.W.A
c.c. Jerry Slaughter Ex. Director K.W.S.W.A.

RED/vjb

14-10-1. Trade practices between distributors and retailers. A distributor may furnish to a retailer services as specifically set forth in this article, and in so doing not be in violation of any other regulation of the director of the alcoholic beverage control. No distributor shall directly or indirectly sell, supply, furnish, give or pay for or loan or lease, any furnishings, fixtures or equipment to a retail licensee. Furnishings, fixtures or equipment include, for purposes of this regulation, permanent shelves which bear no point of sale advertising matter, counters, cash registers, chairs, refrigerators and coolers. (a) Distributors must keep and maintain adequate records on the licensed premises, for a five (5) year period, of all product displays and point of sale materials sold to retailers under this regulation. These records shall show: (1) the name and address of the retailer receiving the product display or point of sale materials.

(2) The date sold.

(3) An itemized list of the product displays or point of sale materials sold.

(4) The charges to the retailer

(b) A distributor may sell to a retailer for their sole use product displays. Product displays as used in this regulation means any wine racks, bins, barrels, casks, and the like from which alcoholic beverages are sold. ~~The cost of a product display to the retailer shall be the actual cost to the distributor. Transportation and installation costs are excluded. In the instance a distributor acquires these materials at no cost, then some consideration must pass from the retailer to the distributor.~~ Product displays shall bear conspicuous and substantial advertising matter.

(c) A distributor may sell to a retailer for their sole use point of sale materials which bear advertising matter. For purposes of this regulation point of sale materials means posteres, placards, designs and mechanical devices, but excludes flyers, handbills and brochures. The materials shall be used only in interior portions of the retail establishment. ~~The cost of point of sale materials to the retailer shall be the actual cost to the distributor. Transportation costs are excluded. In the instance a distributor acquires these materials at no cost, then some consideration must pass from the retailer to the distributor.~~

change "sold" to furnished

modify record keeping requirements to parallel B.A.T.F. requirements.

change "sell" to furnish

delete as noted

change "sell" to furnish

delete as noted

ATTACHMENT "C"

(d) A distributor of distilled spirits, wine or malt beverages may, at a retail establishment, stock and rotate products they distribute, but products distributed by other distributors shall not be altered or disturbed. A distributor of distilled spirits or wine may price their products, but distributors of malt beverages are prohibited from pricing their products. The retail licensee must authorize such stocking, rotation or pricing. The rearranging or resetting of all or part of a store is not authorized.

(e) The provisions of this regulation shall be strictly construed by the director of the alcoholic beverage control, and unless specifically set forth herein as a permissible activity, any giving of, or otherwise providing a thing of value from a distributor to a retailer shall be construed as a violation of K.A.R. 14-4-16, subjecting the distributor and retailer to suspension or revocation of their license or a fine. ~~Product displays or point of sale materials sold to a retailer may not be repurchased by the distributor.~~ The furnishing of services authorized by this regulation may not be conditioned on the purchase of distilled spirits, wine or malt beverages. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1979 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980.)

delete as noted.

Proposed changes to A.B.C. regulation 14-10-2 + Kansas Wine and Spirits Wholesalers Association

14-10-2. Trade practices between distributors and private clubs. A distributor may, upon request of a licensed private club, sell to the club for its sole use consumer advertising specialties such as ashtrays, bottle or can openers, corkscrews, matches, printed recipes, pencils, lights and similar materials which bear substantial advertising matter.

change "sell" to furnish

The sale of these materials may not be conditioned on the purchase of distilled spirits, wine or malt beverages. Distributors must keep and

change "sale" to furnishing

maintain adequate records on the licensed premises, for a five (5) year period, of all materials sold to clubs under this regulation. These records shall show:

modify record keeping requirements to parallel B.A.T.F. requirements.

- (a) The name and address of the club receiving the materials.
- (b) The date sold.
- (c) The materials sold.
- (d) The charges to the club for any materials sold.

~~The cost of these materials to the club shall be the net cost to the distributor, transportation costs excluded. In the instance a distributor acquires these materials at no cost, then some consideration must pass from the club to the distributor. The materials sold to the club may not be repurchased by the distributor. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1979 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980.)~~

delete as noted.

service, whether or not the advertising, display or distribution service received commensurate with the amount paid by the retailer.

§ 6.52 Cooperative advertising.

An arrangement in which an industry member participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.53 Advertising in ballparks, racetracks, and stadiums.

The purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire constitutes paying the retailer for an advertising service within the meaning of the Act.

§ 6.54 Advertising in retailer publications.

The purchase, by an industry member, of advertising in a retailer publication for distribution to consumers or the general public constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.55 Display services.

Industry member reimbursements to retailers for setting up product or other displays constitutes paying the retailer for rendering a display service within the meaning of the Act.

§ 6.56 Renting display space.

A promotion whereby an industry member rents display space at a retail establishment constitutes paying the retailer for rendering a display service within the meaning of the Act.

Guaranteeing Loans

§ 6.61 Guaranteeing loans.

An industry member is prohibited from inducing the purchases of a retailer by guaranteeing any loan or the repayment of any financial obligation of a retailer.

Extension of Credit

§ 6.65 General.

Industry members are prohibited from inducing the purchases of a retailer by the extension of credit to the retailer for a period of time in excess of 30 days from the date of delivery.

§ 6.66 Calculation of period.

For the purpose of this part, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from

all indebtedness arising from the transaction.

§ 6.67 Sales to retailer whose account is in arrears. (Reserved)

Quota Sales

§ 6.71 Quota sales.

An industry member is prohibited from inducing the purchases of a retailer by requiring a retailer to take and dispose of any quota of distilled spirits, wine, or malt beverages.

§ 6.72 "Tie-in" sales.

A requirement that a retailer purchase one product in order to purchase another is prohibited. This includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not prohibited from selling at a special combination price, two or more kinds or brands of products to a retailer, provided (a) the retailer has the option of purchasing either product at the usual price, and (b) the retailer is not required to purchase any product he or she does not want.

Subpart D—Exceptions

§ 6.81 General.

(a) *Application.* An industry member may furnish a retailer equipment, inside signs, supplies, services, or other thing of value, under the conditions and within the limitations prescribed by this subpart. The furnishing of these items or services may not be conditioned on the purchase of distilled spirits, wine or malt beverages.

(b) *Recordkeeping requirements.* Industry members shall keep and maintain records on the permit premises, for a three-year period, of all items furnished to retailers under §§ 6.83, 6.84, 6.85, 6.86, 6.88, 6.89, 6.90, 6.91, 6.96(a), and 6.100. Commercial records or invoices may be used to satisfy this recordkeeping requirement if all required information is shown. These records shall show:

- (1) the name and address of the retailer receiving the item;
- (2) the date furnished;
- (3) the item furnished;
- (4) the industry member's cost of the item furnished (determined by manufacturer's invoice price); and
- (5) charges to the retailer for any item.

§ 6.82 Cost adjustment factor.

(a) *General.* A "cost adjustment factor" will be used to periodically update the dollar limitations prescribed in this subpart. The Director, Bureau of Alcohol, Tobacco and Firearms, shall establish the adjusted dollar limitation

on an annual basis beginning in January, 1981.

(b) *Definition.* "Cost adjustment factor" is a percentage equal to the change in the Bureau of Labor Statistics consumer price index.

§ 6.83 Product displays.

(a) *General.* An industry member may furnish, give, rent, loan, or sell product displays to a retailer, subject to the limitations prescribed in paragraph (c) of this section.

(b) *Definition.* Product display means any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, or malt beverages are displayed and sold.

(c) Conditions and limitations.

(1) The total value of all product displays furnished by an industry member under paragraph (a) of this section may not exceed \$100 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.

(2) Industry members may not pool or combine their dollar limitations in order to provide a retailer a product display valued in excess of \$100 per brand.

(3) Product displays shall bear conspicuous and substantial advertising matter.

§ 6.84 Inside signs.

(a) *General.* An industry member may furnish, give, rent, loan, or sell to a retailer inside signs which bear advertising matter. Inside signs include such things as posters, placards, designs, mechanical devices, and window decorations.

(b) *Conditions and limitations.* Industry members may furnish inside signs to retailers under the following limitations:

(1) The inside sign shall have no secondary value and be of value to the retailer only as advertising.

(2) The inside sign shall be used only in the windows or other interior portions of the retail establishment.

(3) The industry member may not directly or indirectly pay or credit the retailer for displaying the inside sign or for any expense incidental to its operation.

§ 6.85 Retailer advertising specialties.

(a) *General.* An industry member may furnish, give, rent, loan, or sell retailer advertising specialties to a retailer if these items bear advertising matter and are primarily valuable to the retailer as point of sale advertising. These items include such things as trays, coasters,

mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, and calendars. An industry member may add the name or name and address of the retailer to the retailer advertising specialty.

(b) Limitations.

(1) The total value of all retailer advertising specialties furnished by an industry member to a retailer may not exceed \$50 per brand in any one calendar year per retail establishment.

The value of a retailer advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded.

(2) Industry members may not pool or combine their dollar limitations in order to provide a retailer with retailer advertising specialties valued in excess of \$50 per brand.

§ 6.86 Wine lists.

An industry member may furnish, give, rent, loan, or sell wine lists or wine menus to retailers.

§ 6.87 Consumer advertising specialties.

Consumer advertising specialties, such as ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, and pencils, which bear advertising matter may be furnished, given, or sold to a retailer for unconditional distribution by the retailer to the general public. The retailer may not be paid or credited in any manner directly or indirectly for this distribution service.

§ 6.88 Glassware.

An industry member may sell glassware to a retailer if the glassware is sold at a price not less than the cost to the industry member who initially purchased it, and if the price is collected within 30 days of the date of sale.

§ 6.89 Tapping accessories.

Tapping accessories, such as standards, faucets, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves, may be sold to a retailer and installed in the retailer's establishment if the tapping accessories are sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

§ 6.90 Supplies.

Carbon dioxide gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price in the locality where sold, and if the price is

collected within 30 days of the date of sale.

§ 6.91 Samples.

An industry member may furnish or give a sample of distilled spirits, wine, or malt beverages to a retailer who has not previously purchased the brand from that industry member. For each retail establishment, the industry member may give not more than 3 gallons of any brand of malt beverage, not more than 500 milliliters of any brand of distilled spirits, and not more than 3 liters of any brand of wine. If the retailer is an agency of a State or a political subdivision of a State, the industry member may furnish not more than 2 liters of any brand of distilled spirits. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next largest size.

§ 6.92 Newspaper cuts.

Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements may be furnished, given, rented, loaned, or sold by an industry member to a retailer selling the industry member's products.

§ 6.93 Combination packaging.

An industry member may package and distribute distilled spirits, wine, or malt beverages in combination with other items provided that:

(a) The items have no value or benefit to the retailer other than that of having the potential of attracting purchasers and thereby promoting sales;

(b) The package (product plus non-alcoholic item) is designed to be delivered intact to the consumer; and

(c) Any additional cost incurred in creating the combination package is passed on to the retailer.

§ 6.94 Educational seminars.

An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples would be seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of industry member's plant premises. This section does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar.

§ 6.95 Consumer tasting or sampling at retail establishments.

An industry member may conduct tasting or sampling activities at a retail establishment. The industry member may purchase the products to be used from the retailer, but may not purchase

them from the retailer for more than the ordinary retail price.

§ 6.96 Consumer promotions.

(a) *Coupons.* An industry member may furnish to consumers, coupons which are redeemable at a retail establishment under the following conditions:

(1) The coupons may not specify a particular retailer or group of retailers where such coupons can be redeemed.

(2) An industry member may reimburse a retailer for the face value of all coupons redeemed, and pay a retailer a usual and customary handling fee for the redemption of coupons.

(3) Payments for the redemption of coupons shall be made directly to the retail entity to reduce the cost of sales. An industry member may not pay officers, employees or representatives of retailers or wholesalers for the redemption of coupons.

(b) *Direct offerings.* Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees and representatives of wholesalers or retailers are excluded from participation.

§ 6.97 Coil cleaning service.

Coil cleaning service may be furnished, given or sold to a retailer of wine or malt beverages.

§ 6.98 Advertising service.

The names and addresses of retailers selling the products of an industry member may be listed in an advertisement of that industry member, if—

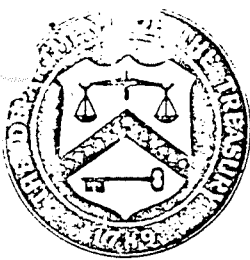
(a) the advertisement does not also contain the retail price of the product, and

(b) the listing is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole.

Picture or illustrations of retail establishments and laudatory references to retailers in industry member advertisements are not hereby authorized.

§ 6.99 Stocking, rotation and pricing service.

Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products purchased from other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

Number: 82-1

Date: March 22, 1982

*OTC 6/8/82
19 9/2
Feltz*

DOLLAR LIMITATION FOR DISPLAY AND RETAILER ADVERTISING SPECIALTIES INCREASED

Director

Proprietors of distilled spirits plants, bonded wine cellars, brewers, wholesale beer dealers, wholesale liquor dealers and others concerned:

Pursuant to 27 CFR 6.82 a "cost adjustment factor" will be used to periodically update the dollar limitations set for industry members who wish to furnish, give, rent, loan, or sell product displays or retailer advertising specialties to retailers (27 CFR 6.83, 6.85). Also to be updated is the dollar limitation set for industry members making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show (27 CFR 6.100). The cost adjustment factor is defined as a percentage equal to the change in the Bureau of Labor Statistics' consumer price index from December of one year to December of the following year.

Based on the data of the Bureau of Labor Statistics, the consumer price index was 8.9 percent higher in December 1981 than in December 1980. Therefore, effective January 1, 1982, the dollar limitation for "Product Displays" (27 CFR 6.83(c)(1)) has been increased from \$100 per brand to \$109 per brand. Similarly, the former \$50 maximum for "Retailer Advertising Specialties" (27 CFR 6.85(b)(1)) has been increased to \$54 per brand. Also the \$100 limit for "Participation in Retailer Association Activities" (27 CFR 6.100(e)) has been increased to \$109 per year.

Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226.

G. J. [Signature]

Director

14-1-1. Definitions. As used in these rules and regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this section: (1) (a) "Church" means a building owned or leased by a religious organization and used exclusively as a place for religious worship and other activities ordinarily conducted by a religious organization.

(2) (b) "Public bonded liquor warehouse" shall-mean means a public bonded warehouse bonded and licensed ~~as-provided~~ in accordance with K.S.A. 82-161 through 82-171, both sections inclusive, ~~within-the-state-of-Kansas~~ and any amendments to those statutes. ~~and-which-warehouse-shall-have-filed-with the-director-a-corporate-surety-bond-in-the-amount-to-be-fixed-by the-director,-but-never-less-than-\$15,000.00,-executed-by-a company-authorized-to-do-business-in-this-state-and-signed-by a-resident-agent,-conditioned-that-said-licensed-and-bonded warehouse-will-in-all-respects-comply-with-the-provisions-of-the Kansas-liquor-control-act-and-the-rules-and-regulations-of-the director-insofar-as-the-same-are-applicable-to-said-warehouse.~~

(3) (c) "Premises" shall-mean means ~~only-the-area-contained within-the-upright-structure,-or-portion-thereof,-being the room or rooms~~ contained within the upright structure and specifically designated in the diagram in the application for license wherein the applicant desires authorization to conduct the licensed business and not the surrounding real estate owned or leased by the licensee.

APPROVED

ATTORNEY GENERAL

By RJB Asst.
11-12-82

DEPT. OF ADMINISTRATION APPROVED

BY FJA DATE 11/22/82

(4) (d) "Intoxicated" means the state or condition of being under the influence of alcoholic liquor, cereal malt beverage, narcotics or other drugs to the extent that the individual does not have the normal use of physical or mental faculties; in this condition the individual is rendered incapable of acting in the manner in which an ordinary, prudent, and cautious person who is in full possession of their faculties, and who is using reasonable care, would act under like conditions.

(5) (e) "Incapacitated" means impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of alcoholic liquor, cereal malt beverage or other drugs to the extent that sufficient understanding or capacity to make or communicate responsible decisions is lacking.

(f) "Furnishings, fixtures or equipment" means counters, permanent shelves, cash registers, carpeting, televisions, radios, desks, chairs, stools, refrigerators, coolers or any other durable item. Furnishing, fixtures or equipment shall not include any product display.

(g) "Interior decoration" means any durable ornament, picture, plaque, mechanical device or other item intended to adorn or beautify the interior of any licensed retailer liquor premises. Interior decoration shall not include any point of sale material.

(h) "Product display" means any nondurable device, including temporary shelves, stackers, poles, bins and racks, in or upon which containers of alcoholic liquor may be placed, and which identifies specifically any manufacturer's brand and bears conspicuous and substantial advertising matter.

BY *RMB*
ATTORNEY GENERAL
APPROVED

DEPT. OF ADMINISTRATION APPROVED
BY *JLH* DATE *1/12/10*

(i) "Point of sale material" means any poster, plaque, picture or similar item made of paper, cardboard, or plastic, which identifies specifically any manufacturer's brand. Point of sale material shall not include advertising specialities such as trays, coasters, mats, name cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, cameras, binoculars, mirrors, clocks, calendars, ash trays, bottle or can openers, corkscrews, umbrellas, shopping bags, matches, pamphlets, cards, leaflets, blotters, postcards, pencils and other similar items. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-401, 41-402, 41-403, 41-404, 41-405, 41-406, 41-409, 41-701, 41-703, 41-710, 41-713, 41-714, 41-715, 41-803, 41-1126; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1983.)

APPROVED

ATTORNEY GENERAL

By RJB Asst.
11-12-82

DEPT. OF ADMINISTRATION APPROVED
BY FJL DATE 11/10/82

14-10-1a. Advertising; product displays and point of sale material.

(a) To the extent permitted in this subsection, a distributor may furnish a product display or displays to a retailer. The total value of all product displays furnished by a distributor to any one retailer, which are in use at any one time, shall not exceed \$109.00 per brand. The value of a product display is the actual cost to the manufacturer, distiller, importer, wholesaler or distributor who initially purchased it. Transportation and installation costs shall be excluded in determining the value of a product display. Pooling or combining of the dollar limitation in any manner in order to furnish a retailer product displays valued in excess of \$109.00 per brand shall be prohibited. No manufacturer, distiller, importer, wholesaler, distributor or any agent, subsidiary or representative thereof shall, directly or indirectly, pay or credit the retailer for furnishing, transporting, constructing, or setting up a product display, or for any other expense incidental to the display.

(b) To the extent permitted in this subsection, a distributor may furnish or give point of sale material to a retailer. The total value of all point of sale material furnished by a distributor to any one retailer, which is in use at any one time, shall not exceed \$109.00 per brand. The value of any point of sale material is the actual cost to the manufacturer, distiller, importer, wholesaler, or distributor who initially purchased it. Transportation costs shall be excluded in

DEPT. OF ADMINISTRATION APPROVED
BY FJD DATE 11/2/82

APPROVED
ATTORNEY GENERAL
BY RJB Asst.
11-12-82

determining the value of any point of sale material. Pooling or combining of the dollar limitation in any manner to furnish a retailer point of sale material having an aggregate value in excess of \$109.00 per brand shall be prohibited. No manufacturer, distiller, importer, wholesaler, distributor or any agent, subsidiary or representative thereof shall directly or indirectly pay or credit the retailer for furnishing, transporting or setting up point of sale material, or for any other expense incidental to the point of sale material.

(c) Each distributor shall keep and maintain, at its licensed premises and for a period of three years, records of all product displays furnished to retailers. These records shall show:

(1) the name and address of the retailer to whom the product display was furnished;

(2) the date the product display was furnished;

(3) a clear and concise description of the product display furnished;

and

(4) the value of the product display furnished.

(d) No manufacturer, distiller, importer, wholesaler, distributor, or retailer or any agent, subsidiary or representative thereof shall furnish coupons to consumers which are redeemable at a retail establishment, nor furnish contest prizes, premium offers, refunds, and like items directly to consumers.

DEPT. OF ADMINISTRATION APPROVED
BY [Signature] DATE 11/12/82

APPROVED
ATTORNEY GENERAL
By [Signature] Asst.
11-12-82

(e) The provisions of this rule and regulation shall be construed strictly by the director of the alcoholic beverage control. Unless specifically set forth in this rule and regulation as permissible, the giving of, or otherwise providing any thing of value to a retailer by a distributor shall be construed as a violation of K.A.R. 14-4-16. Such a violation shall subject the distributor and retailer to suspension or revocation of their license or a fine. Product displays or point of sale materials furnished to a retailer shall not be repurchased by the distributor. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-703, 41-714; effective May 1, 1983.)

APPROVED
ATTORNEY GENERAL
By RJB 11-12-82 Asst.

DEPT. OF ADMINISTRATION APPROVED
BY FPS DATE 11/2/82

14-10-lb. Stocking and pricing products. (a) Any distributor of distilled spirits, wine or malt beverages may stock and rotate, at a retail establishment, products which are distributed by the distributor. In performing this stocking and rotating, the products of other distributors shall not be disturbed.

(b) Any distributor of distilled spirits or wine may price, at a retail establishment, products which are distributed by the distributor. Distributors of malt beverages shall not price, at a retail establishment, products which are distributed by the distributor.

(c) Stocking and rotation, or pricing of products shall not be performed without the permission of the retailer.

(d) A distributor shall not assist a retailer in rearranging or resetting all or a part of the licensed retail premises.

(e) The stocking and rotation, or pricing of products as authorized in this rule and regulation shall not be conditioned on the retailer's purchasing any distilled spirits, wine or malt beverage. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-703; effective May 1, 1983.)

DEPT. OF ADMINISTRATION APPROVED
BY FJL DATE 11/18/82

APPROVED
ATTORNEY GENERAL
By RJB Asst.
11-12-82

14-10-2. Trade practices between distributors and private clubs. (a) A distributor may, upon request of a licensed private club, sell furnish to the club for its sole use consumer and retail advertising specialties such as ashtrays, bottle or can openers, corkscrews, matches, printed-recipes, pencils, lights, trays, coasters, mats, name cards, paper napkins, foam scrapers, back bar mats, blotters, glasses, pitchers and similar materials which bear substantial advertising matter. All glassware shall be for on-premise use only. Hats, T-shirts, jackets, belt buckles or other items of clothing; lights, thermometers, clocks, cameras, binoculars, calendars, mirrors or other items of secondary value shall not be provided to a private club by any distributor.

(b) The sale furnishing of these materials may shall not be conditioned on the purchase of distilled spirits, wine or malt beverages.

(c) ~~Distributors must~~ Each distributor shall keep and maintain adequate-records-on-the, at its licensed premises, and for a ~~five-(5)~~ period of three years, records of all materials sold to clubs under this rule and regulation. These records shall show:

- (1) The name and address of the club receiving the materials;
- (2) the date sold;
- (3) the materials sold; and
- (4) the ~~charges~~ charge to the club for any materials sold.

~~The cost of these materials to the club shall be the actual cost~~

DEPT. OF ADMINISTRATION APPROVED
BY FJD DATE 11/12/82

APPROVED
ATTORNEY GENERAL
By RJB 11-12-82 Asst.

to the distributor, transportation costs excluded,--in the instance a distributor requires these materials at no cost, then some consideration must pass from the club to the distributor

(d) The total value of all consumer and retailer advertising specialties furnished to a private club by any distributor shall not exceed \$200.00 dollars per brand in any one calendar year. The value of those items is the actual cost of that item to the manufacturer, distiller, importer, wholesaler, or distributor who actually purchased it. Transportation and installation costs are excluded.
(Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-703, 41-714; K.S.A.-1979-Supp-41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; amended May 1, 1983.)

APPROVED
ATTORNEY GENERAL

By RJB Asst.
11-12-82

DEPT. OF ADMINISTRATION APPROVED
BY FJD DATE 11/12/82

Attachment #2
Minutes of February 25, 1983

MEMORANDUM

TO: Honorable Edward F. Reilly, Jr.
Chairman, Senate Federal and State Affairs Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Senate Concurrent Resolution No. 1613

DATE: February 25, 1983

PURPOSE

Senate Concurrent Resolution No. 1613, if enacted, concerns trade practices for alcoholic beverages; modifying Kansas Administrative Regulation 14-10-1a, which will be effective May 1, 1983.

PERSPECTIVE

This concurrent resolution corrects a double meaning as it pertains to product display and point of sale materials furnished by a distributor to a retailer.

Your attention is invited to lines 28, 29, 30 and 31 which states: "The total value of all product displays furnished by a distributor to any one retailer, which are in use at any one time, shall not exceed \$109 per brand per calendar year." The words "in use at any one time" and "per calendar year" have opposite meanings, therefore, the words "per calendar year" should be deleted to correspond to applicable federal regulations.

Your attention is further invited to lines 44, 45, 46 and 47 which states: "The total value of all point of sale material furnished by a distributor to any one retailer, which is in use at any one time, shall not exceed \$109 per brand per calendar". The words "in use at any one time" and "per calendar year" have opposite meanings, therefore, the words "in use at any one time" should be deleted to correspond to applicable federal regulations. In addition, the word "year" should be added after "per calendar" to read "per calendar year".

Additionally, your attention is invited to lines 37 and 53 which state: "\$109 per brand per calendar year." The words "per calendar year" should be deleted as this refers to pooling or combining of the dollar limitation.

COMMENTS AND/OR RECOMMENDATIONS

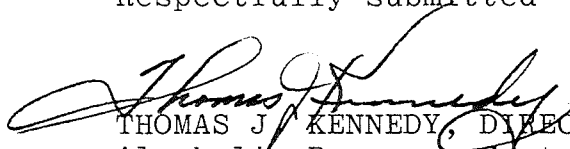
The Joint Committee of the Legislature and the Director of Alcoholic Beverage Control both recognized the conflict in the above statements and agreed that a change should be made in the regulation to correspond to applicable federal regulations.

Recommend that:

- a. On line 31, the words "per calendar year" should be deleted.
- b. On line 37, the words "per calendar year" should be deleted.
- c. On line 53, the words "per calendar year" should be deleted.
- d. On lines 46 and 47, that the words "which is in use at any one time" should be deleted and the words "per calendar" to include "year" be added.

The reason for this recommendation is that the above language will then parallel the Federal Bureau of Alcohol, Tobacco and Firearms Regulations.

Respectfully submitted


THOMAS J. KENNEDY, DIRECTOR
Alcoholic Beverage Control Division

TJK:cjk

than a wholesaler or distributor licensed as such under the laws of this state relating to cereal malt beverages and malt products.

(4) No supplier, wholesaler, distributor, manufacturer or importer shall by oral or written contract or agreement, expressly or impliedly fix, maintain, coerce or control the resale price of alcoholic liquor, beer or cereal malt beverage to be resold by such wholesaler, distributor, manufacturer or importer, except that a licensed distributor may furnish to retailers lists of the minimum bottle and case prices required under subsection (2) of K.S.A. 1979 Supp. 41-1117 and amendments thereto.

(5) Any supplier, wholesaler, distributor or manufacturer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000), to which may be added not to exceed six (6) months imprisonment. In addition, any supplier, wholesaler, distributor, manufacturer or importer violating the provisions of this section relating to fixing, maintaining or controlling the resale price of alcoholic liquor, beer or cereal malt beverage shall be liable in a civil action to treble the amount of any damages awarded plus reasonable attorney fees for the damaged party. (K.S.A. 41-701; L. 1974, ch. 195, § 3; L. 1979, ch. 153, § 4; May 10.)

41-702. Retailer forbidden to receive money or credit from wholesaler; manufacturer, distributor or wholesaler forbidden to give money or extend credit to retailer; revocation of license. (1) It shall be unlawful for any person having a retailer's license, or any officer, associate, member, representative or agent of such licensee to accept, receive, or borrow money, or anything else of value, or to accept or receive credit, directly or indirectly, from any person, partnership or corporation engaged in the manufacturing, distributing or wholesaling of such liquor, or from any person connected with or in any way representing, or from any member of the family of such manufacturer, distributor or wholesaler, or from any stockholders in any corporation engaged in manufacturing, distributing or wholesaling of such liquor, or from any officer, manager, agent or representative of such manufacturer, distributor or wholesaler. It shall be unlawful for any manufacturer, distributor or wholesaler to give or lend money or anything of value or otherwise loan or extend credit, directly or indirectly, to any such licensee or to the manager, representative, agent, officer or director of such licensee.

(2) If any recipient of a license to sell intoxicating liquors at retail or wholesale shall violate any of the provisions of subdivision (1) of this section, his license shall be suspended or revoked by the director in the manner provided by law for revocation or suspension for other violations of this act. (L. 1949, ch. 242, § 65; March 9.)

1. Liquor dealers held to receive something of value from manufacturer contrary to statute. *State, ex rel., v. Kansas Retail Liquor Dealers Foundation, Inc.*, 192 K. 293, 296, 297, 298, 387 P.2d 171.

41-703. Manufacturers, distributors and wholesalers; certain sales, gifts, loans and retail interests prohibited. No manufacturer, distributor or wholesaler shall directly or indirectly: (1) Sell, supply, furnish, give or pay for, or loan or lease, any furnishing, fixture or equipment on the premises of a place of business of another licensee authorized under this act to sell alcoholic liquor at retail; (2) pay for any such license, or advance, furnish, lend or give money for payment of such license; (3) purchase or become the owner of any note, mortgage or other evidence of indebtedness of such licensee or any form of security therefor; (4) be interested in the ownership, conduct or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (5) be interested, directly or indirectly, or as owner, part owner, lessee or lessor thereof, in any premises upon which alcoholic liquor is sold at retail.

No manufacturer, distributor or wholesaler shall, directly or indirectly or through a subsidiary or affiliate, or by any officer, director or firm of such manufacturer, distributor or wholesaler, furnish, give, lend or rent any interior decorations or any signs, for inside or outside use, for use in or about or in connection with any one establishment on which products of the manufacturer, distributor or wholesaler are sold. No person engaged in the business of manufacturing, distributing or wholesaling alcoholic liquors shall directly or indirectly pay for or advance, furnish or lend money for the payment of any licenses for another. (L. 1949, ch. 242, § 66; March 9.)

41-704. Manufacturers; interest in business of distributor prohibited. No manufacturer of alcoholic liquors holding a manufacturer's license under this act and no manufacturer of alcoholic liquors outside of this state manufacturing alcoholic liquors for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage or lien on any personal or real property, as guarantor, endorser or surety, be interested in the ownership, conduct, operation or management of any alcoholic liquor distributor holding an alcoholic liquor distributor's license under this act; nor shall any manufacturer of alcoholic liquors holding a manufacturer's license under this act nor any manufacturer of alcoholic liquors outside of this state manufacturing alcoholic liquors for distribution and sale within this state, be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director or employee



Att hment #

Minutes of February 25, 1983

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 10, 1982

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

Mr. Thomas J. Kennedy
Director of Alcoholic Beverage Control
State Department of Revenue
5th Floor, State Office Building
Topeka, Kansas

Re: Proposed rule and regulation
number 14-10-1a, which authorizes
a distributor to furnish, give,
rent, loan or sell "retailer
advertising specialties" to a
retailer.

Dear Mr. Kennedy:

In accordance with the provisions of K.S.A. 1981 Supp. 77-420(c),
as amended by L. 1982, ch. 386, §3, I hereby decline to approve
the above-referenced proposed rule and regulation.

This office has consistently construed the provisions of Chapter 41
of the Kansas Statutes Annotated in a liberal fashion to permit
the Director of Alcoholic Beverage Control to have flexibility
in administering these laws. I, however, cannot approve a proposed
rule and regulation which, in my judgment, conflicts with statutory
provisions. In my judgment, the above-referenced proposed rule and
regulation conflicts with the letter and spirit of K.S.A. 41-702
and 41-703.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

RTS:RJB:jm
cc: Robert E. "Tuck" Duncan, II

14-10-1. Trade practices between distributors and retailers. A distributor may furnish to a retailer services as specifically set forth in this article, and in so doing not be in violation of any other regulation of the director of the alcoholic beverage control. No distributor shall directly or indirectly sell, supply, furnish, give or pay for or loan or lease, any furnishings, fixtures or equipment to a retail licensee. Furnishings, fixtures or equipment include, for purposes of this regulation, permanent shelves which bear no point of sale advertising matter, counters, cash registers, chairs, refrigerators and coolers. (a) Distributors must keep and maintain adequate records on the licensed premises, for a five (5) year period, of all product displays and point of sale materials sold to retailers under this regulation. These records shall show: (1) the name and address of the retailer receiving the product display or point of sale materials.

(2) The date sold.

(3) An itemized list of the product displays or point of sale materials sold.

(4) The charges to the retailer:

(b) A distributor may sell to a retailer for their sole use product displays. Product displays as used in this regulation means any wine racks, bins, barrels, casks, and the like from which alcoholic beverages are sold. ~~The cost of a product display to the retailer shall be the actual cost to the distributor. Transportation and installation costs are excluded. In the instance a distributor acquires these materials at no cost, then some consideration must pass from the retailer to the distributor.~~ Product displays shall bear conspicuous and substantial advertising matter.

(c) A distributor may sell to a retailer for their sole use point of sale materials which bear advertising matter. For purposes of this regulation point of sale materials means poster, placards, designs and mechanical devices, but excludes flyers, handbills and brochures. The materials shall be used only in interior portions of the retail establishment. ~~The cost of point of sale materials to the retailer shall be the actual cost to the distributor. Transportation costs are excluded. In the instance a distributor acquires these materials at no cost, then some consideration must pass from the retailer to the distributor.~~

change "sold" to furnished

modify record keeping requirements to parallel B.A.T.F. requirements.

change "sell" to furnish

delete as noted

change "sell" to furnish

delete as noted

ATTACHMENT "C"

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DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL DIV.

(d) A distributor of distilled spirits, wine or malt beverages may, at a retail establishment, stock and rotate products they distribute, but products distributed by other distributors shall not be altered or disturbed. A distributor of distilled spirits or wine may price their products, but distributors of malt beverages are prohibited from pricing their products. The retail licensee must authorize such stocking, rotation or pricing. The rearranging or resetting of all or part of a store is not authorized.

(e) The provisions of this regulation shall be strictly construed by the director of the alcoholic beverage control, and unless specifically set forth herein as a permissible activity, any giving of, or otherwise providing a thing of value from a distributor to a retailer shall be construed as a violation of K.A.R. 14-4-16, subjecting the distributor and retailer to suspension or revocation of their license or a fine. ~~Product displays or point of sale materials sold to a retailer may not be repurchased by the distributor.~~ The furnishing of services authorized by this regulation may not be conditioned on the purchase of distilled spirits, wine or malt beverages. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1979 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980.)

delete as noted.

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DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL DIV.

Proposed changes to A.B.C. regulation 14-10-2 + Kansas Wine and Spirits Wholesalers Association

14-10-2. Trade practices between distributors and private clubs. A distributor may, upon request of a licensed private club, sell to the club for its sole use consumer advertising specialties such as ashtrays, bottle or can openers, corkscrews, matches, printed recipes, pencils, lights and similar materials which bear substantial advertising matter.

change "sell" to furnish

The sale of these materials may not be conditioned on the purchase of distilled spirits, wine or malt beverages. Distributors must keep and

change "sale" to furnishing

maintain adequate records on the licensed premises, for a five (5) year period, of all materials sold to clubs under this regulation. These records shall show:

modify record keeping requirements to parallel B.A.T.F. requirements.

- (a) The name and address of the club receiving the materials.
- (b) The date sold.
- (c) The materials sold.
- (d) The charges to the club for any materials sold.

delete as noted.

~~The cost of these materials to the club shall be the retail cost to the distributor, transportation costs excluded. In the instance a distributor acquires these materials at no cost, then some consideration must pass from the club to the distributor. The materials sold to the club may not be repurchased by the distributor. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1979 Supp. 41-211; effective, 8-30-28, Dec. 12, 1979; effective May 1, 1980.)~~

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL DIV.

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FURLONG

Furlong. A measure of length, being forty poles, or one-eighth of a mile.

Furlough /fɜrlow/. A leave of absence. *Smith v. Sovereign Camp, W. O. W.*, 204 S.C. 193, 28 S.E.2d 808, 811. A temporary leave of absence to one in the armed service of the country, or to a government official or an employee, indicating some voluntary act on part of employee as contrasted with the phrase "lay-off" which contemplates action by employer. *Jones v. Metropolitan Life Ins. Co.*, 156 Pa.Super. 156, 39 A.2d 721, 725. Also the document granting leave of absence.

Fur manifestus /fɜr mænəfɛstəs/. In the civil law, a manifest thief. A thief who is taken in the very act of stealing.

Furnage. See **Fornagium**; **Four**.

Furnish. To supply, provide, or equip, for accomplishment of a particular purpose. As used in the liquor laws, "furnish" means to provide in any way, and includes giving as well as selling.

Furniture. This term includes that which furnishes, or with which anything is furnished or supplied; whatever must be supplied to a house, a room, place of business, or public building or the like, to make it habitable, convenient, or agreeable; goods, vessels, utensils, and other appendages necessary or convenient for housekeeping; whatever is added to the interior of a house or apartment, for use or convenience.

Furor brevis /fyʊrər briyvəs/. A sudden transport of passion.

Furor contrahi matrimonium non sinit, quia consensu opus est /fyʊrər kɔntrɛhyay mətrəmōwn(i)yəm nɔn sɪnət, kwáyə kɔnsɛnshuw ówpəs ɛst/. Insanity prevents marriage from being contracted, because consent is needed. 1 Bl.Comm. 439.

Furst and fondung. In old English law, time to advise or take counsel.

Furta /fɜrdə/. A right derived from the king as supreme lord of a state to try, condemn, and execute thieves and felons within certain bounds or districts of an honour, manor, etc.

Further. Not a word of strict legal or technical import, and may be used to introduce negation or qualification of some precedent matter, but generally when used as an adverb it is word of comparison, and means "additional," and is equivalent to "moreover, or furthermore, something beyond what has been said or likewise, or also." Wider, or fuller, or something new. Occasionally it may mean any, future, or other.

Further advance. A second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance. See also **Future advance clause**; **Future advances**.

Furtherance. Act of furthering, helping forward, promotion, advancement, or progress. *Maryland Casualty Co. v. Smith, Tex.Civ.App.*, 40 S.W.2d 913, 914.

Further assurance, covenant for. See **Covenant**.

Further hearing, or further proceedings. Hearing at another time; additional hearing; new trial; or other proceedings directed by appellate court. Not a new proceeding but rather a continuation of an existing proceeding.

Further instructions. Additional instructions given to jury after they have once been instructed and have retired. Such may be requested by jury during course of deliberations when, for example, the jury is uncertain as to the applicable law.

Further maintenance of action, plea to. A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defendant puts forward for the purpose of showing that the plaintiff should not further maintain his action. Such plea is obsolete under federal and state Rules of Civil Procedure.

Furtive /fɜrdəv/. Stealthily; by secret or stealth.

Furtum /fɜrdəm/. Lat. Theft. The fraudulent appropriation to one's self of the property of another, with an intention to commit theft without the consent of the owner. The thing which has been stolen.

Furtum conceptum /fɜrdəm kɔnsɛptəm/. In Roman law, the theft which was disclosed where, upon searching any one in the presence of witnesses in due form, the thing stolen was discovered in his possession.

Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat /fɜrdəm ɛst kɔntrɛktɛysh(iy)ow riay æliyiyniy frɔdyuwlɛntə, kəm ænəmow f(y)ɔrænday, ɔnváydw ílow dómənow kyúwjs riyz ílə fyúwərət/. Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.

Furtum manifestum /fɜrdəm mænəfɛstəm/. Open theft. Theft where a thief is caught with the property in his possession.

Furtum non est ubi initium habet detentionis per dominium rei /fɜrdəm nɔn ɛst yúwbay ɔnɪsh(iy)əm héybat dɛtɛnshiyównəs pər dəmín(i)yəm riay/. There is no theft where the foundation of the detention is based upon ownership of the thing.

Furtum oblatum /fɜrdəm ɔbléydəm/. In the civil law, offered theft. *Oblatum furtum dicitur cum res furtiva ab aliquo tibi oblata sit, eaque apud te concepta sit.* Theft is called "oblatum" when a thing stolen is offered to you by any one, and found upon you.

Fuse plug levees. Under Mississippi Flood Control Act lower points for possible flood spillways were designated "fuse plug levees." *U. S. v. Sponenbarger, Ark.*, 308 U.S. 256, 60 S.Ct. 225, 227, 84 L.Ed. 230.

Fust. See **Fuz**.

Minutes of February 25, 1983

MEMORANDUM

TO: Honorable Edward F. Reilly, Jr.
Chairman, Senate Federal and State Affairs Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Senate Concurrent Resolution No. 1615

DATE: February 25, 1983

PURPOSE

Senate Concurrent Resolution No. 1615, if adopted, modifies Kansas Administrative Regulation 14-8-2. Concerning prohibited statements and restrictions in the advertising of alcoholic liquor; and 14-8-11 concerning advertising by radio, television, motion pictures, gifts prohibited.

PERSPECTIVE

This concurrent resolution, as it relates to Kansas Administrative Regulation 14-8-2 deletes subparagraph 4 which states: "Advertisements of alcoholic liquor shall not contain 'any statement of or reference to the price of the alcoholic liquor, except a reference to the authorized discount on case sales; if the advertisement is directed to the public'; and 'Kansas licensees shall not be allowed to advertise any alcoholic liquor by the brand name'; however, this restriction shall not apply to the advertising of private labels when the same are advertised by the licensed distributor owning the label."

The above are commonly referred to as "Price and Brand" advertising.

The second part of this resolution has to do with Kansas Administrative Regulation 14-8-11, advertising by radio, television, etc.

The language of this regulation has been rewritten and this resolution should read:

"No licensee shall advertise any alcoholic liquor by means of any gift or distribution of matches or similar advertising. A retail licensee may provide shirts or jackets for bowling, baseball, or other athletic teams so long as the advertising to be placed on the garment consists solely of the name and address of the liquor store as it appears on the retail license. Any manufacturer, supplier, distributor or retailer may advertise distilled spirits, wine or beer over the radio, television, public address system, or by means of motion pictures, still slides or film strips.

Be it further resolved: That Kansas administrative regulations 14-8-2 and 14-8-11 are hereby modified by this concurrent resolution and shall become effective as modified on May 1, 1983.

This permits advertising of the place of business over the radio and television and permits retailers as well as manufacturers, suppliers and distributors to advertise distilled spirits, wine or beer over the radio, TV, etc.

COMMENTS AND/OR RECOMMENDATIONS

The statutory framework in which the Division of Alcoholic Beverage Control operates must be viewed and evaluated from an historical perspective. As you know, Kansas has a long tradition of promoting temperance by strict regulatory control. A key provision of this approach has been a ban on most forms of advertising.

Through the years, statutory and regulatory changes have been made which reflect a less restrictive view, but often these changes have created inconsistency regarding the states approach to liquor advertising.

In the last six or seven years, decisions by numerous state and federal courts have struck down similar regulation in other locales. The courts rejection of statutes and regulations prohibiting price and brand advertising is premised on an ever growing recognition of the rights of commercial free speech. Kansas has yet to face a direct 1st Amendment challenge to our regulations but considering the success of such challenges in other states, it seems certain that court action in this area is imminent.

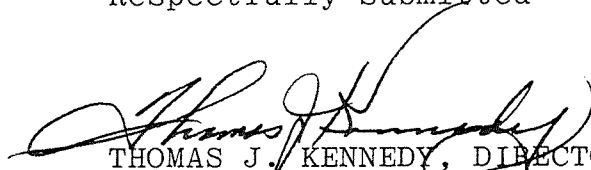
However, your attention is directed to the Oklahoma Telecasters Association, et al. vs. Richard A. Crisp, No. 82-1058, (Jan., 1983), in which the Tenth Circuit, relying on the Supreme Court's refusal to find a substantial federal question in a recent Ohio case in which that state's regulations prevailed over rights of commercial free speech, (See Queensgate Investment Co. vs. Liquor Control Commission, 69 Ohio St. 2d 361, 433 N.E. 2d 138 (1982)), reversed the Oklahoma federal district court's determination that the state ban on price and brand advertising was an unconstitutional abridgment of First Amendment rights relating to commercial free speech.

While the Oklahoma Telecasters Association et al. vs. Richard A. Crisp case is certain to be appealed to the United States Supreme Court, the decisions in these cases appear to reaffirm the states authority to regulate price and brand

advertising and bring to a halt the line of cases which placed the First Amendments rights of commercial free speech above the states right to control liquor granted by the 21st amendment to the U.S. Constitution.

It was our recommendation to the Senate Federal and State Affairs Committee that a concurrent resolution be introduced striking the above language from Kansas Administrative Regulations 14-8-2 and 14-8-11. This will in effect, bring the matter of price and brand advertising and the matter of broadcasters being able to advertise before the legislature for a thorough review, a reaffirmation, or a revision of legislative intent.

Respectfully submitted



THOMAS J. KENNEDY, DIRECTOR
Alcoholic Beverage Control Division

TJK:cjk

A. Chment # 8
Minutes of February 25, 1983

Comments to Members of the Senate Federal and State Affairs Committee
by Hank Booth, General Manager, Lawrence Broadcasters, Incorporated

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to speak in support of SCR 1615 which would, if enacted, equitably treat all members of the media. We in the electronic media realize that the primary intent of the proposed legislation involves restrictions on price and brand advertising of liquor, but one of the provisions would also remove restrictions on liquor store advertising on radio and television.

For years, broadcasters nationwide have endorsed a code which prohibits the advertising of alcoholic beverages other than beer and wine. That code has now been declared unconstitutional by a federal court and has been dissolved. It is my intent, and I am sure the intent of most broadcasters nationwide to continue to refuse advertising for distilled spirits. What is at question in the mind of broadcasters in Kansas is a state law that allows advertising of liquor stores on the pages of state newspapers, but will not allow liquor stores to participate in even a limited way on radio or television. Let me give you two examples of the kind of activity now precluded by state law. A radio station does a remote broadcast for the United Fund from a local shopping center. Each of the merchants in that center have agreed to pitch in to help pay the cost of the phone line charges and other miscellaneous expenses. For this, they will receive mentions as a part of the broadcast - not direct advertising, just mentions. The liquor store in the center wants to participate financially, but cannot because of the state law. Several liquor stores recently wanted to participate in a campaign at the university to urge responsible use of alcohol. They could not if they were involved in the radio promotion. It is as though the local liquor store owner is a second class citizen when it comes to being identified on the local radio or television station.

I should point out that SCR 1615 needs a little work as acknowledged by the revisor. In lines 96-97 and 104-105, there is reference to allowing over the air advertising by retail dealers of their "place of business" and "distilled spirits, beer and wine," while amendments to Section 14-8-11, lines 96-106, seem to contradict that intent. We would like your action to reflect that intent; to give broadcasters parity with our print brethren in respect to advertising of this type of local small business.

Hearing for SCR 1613 and 1615
Senate Federal and State Affairs Committee

Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

Attachme #9

Minutes of February 25, 1983

Concerned citizens believe less alcohol related suffering is more important than money in the pocketbooks of those who deal in this deadly drug. Measures that promote consumption, promote alcoholism. Prevention of alcohol problems is, at heart, a political issue.

A January 24, 1983 opinion of the United States Court of Appeals for the Tenth Circuit expresses our concern. "The asserted governmental interest of Oklahoma in prohibiting the advertising of alcoholic beverages is to reduce the sale and consumption of liquor, and thereby reduce the problems associated with alcohol abuse. There can be no question that this asserted interest is substantial. Under its general police power, Oklahoma has a legitimate and substantial interest in the health and welfare of its citizens, the safety of its highways, the stability of its families, and the productivity of its work force, all of which are significantly and adversely affected by the abuse of alcohol."

The court later stated, "We hold, as a matter of law, that prohibitions against the advertising of alcoholic beverages are reasonably related to reducing the sale and consumption of those beverages and their attendant problems. The entire economy of the industries that bring these challenges is based on the belief that advertising increases sales. We therefore do not believe that it is constitutionally unreasonable for the State of Oklahoma to believe that advertising will not only increase sales of particular brands of alcoholic beverages but also of alcoholic beverages generally. The choice of the Oklahoma legislature, and its people with respect to the constitutional provision, is not unreasonable, and does directly advance Oklahoma's interest in reducing the sale, consumption, and abuse of alcoholic beverages."

Advertising has one purpose - attract customers to the store. Point of sale material and product displays have one purpose - encourage impulse buying.

A liquor dealer in Ohio filed an appeal with the United States Supreme court when he was not permitted to advertise his retail price. On October 4, 1982, the Supreme court dismissed the appeal "for want of a substantial federal question." Kansas has the right to restrict advertising and the promotion of increased use of our most abused drug.

What is more important? Less alcohol related suffering or increased sales and consumption?

On the CBS evening news of March 17, 1982, Bill Moyers was commenting on the death of John Belushi and nine young people who drove past warning gates and into the path of an onrushing train. He said, "You do not need to be an old fogey to wish that the bias of our society was not toward alcohol and other drugs as the fashionable, smart, and sophisticated thing to do, or to wish that we did not hide its meanness with funny commercials, glowing pictures, and fancy lies."

Alcohol related tragedy is so serious we must come at it from all directions. Why would any lawmaker vote to promote consumption?

Non-smoking does not prevent cancer. It reduces the risk of cancer. If omitting one item from the diet would prevent and arrest cancer, would you vote to promote consumption of that item with advertising, point of sale material, and product displays? Alcoholism is prevented and arrested by omitting one item from the diet.

Doctors vote on new policies

Minutes of February 25, 1983

Associated Press

Delegates attending the Washington State Medical Association's annual convention in Spokane voted Sunday to seek reform of state medical malpractice laws.

The group's House of Delegates — the 165-member policy-making body of the WSMA — passed the resolution after hearing that the size and number of malpractice awards are continuing to escalate.

The action came on the last day of the four-day session attended by some 800 physicians.

Dr. Donald M. Keith, in private practice in Seattle, was installed as president of the WSMA for the next year. Dr. Donald H. Ballew, a cardiologist in private practice in Yakima, was elected president-elect.

In other action, the House of Delegates voted to:

● Adopt a resolution reaffirming the concept that physicians strive to provide quality medical care for all citizens of the state regardless of ability to pay.

● Adopt a set of guidelines which provides patient access to medical records and agreed to do additional study on problems of medical record confidentiality.

● Adopt a resolution advocating that money spent on advertising and promotion of alcohol and tobacco products not be allowed as a deduction from corporate income tax because alcohol and tobacco products are harmful to health.

● Reaffirm an endorsement of mandatory continuing medical education requirements to assure the public that physicians keep abreast of medical developments.

● Approve a report on prescription drug abuse, misuse and diversion. The

report directs WSMA "to institute a comprehensive statewide program to curtail prescription drug abuse and to promote appropriate prescribing practices."

● Adopt a resolution that the WSMA study the establishment of an association-sponsored loan program for medical students.

● Approve a formal statistical analysis of a survey taken to determine how many additional patients that physicians in King, Pierce, Snohomish and Kitsap counties could absorb. The survey was conducted a few months after the U.S. Public Health Hospital in Seattle announced it might close.

● Approve a report recommending the phase-out of a physician assistants program at University of Washington over the next two years. The group cited decreased opportunities for physician assistants to practice in Washington.

Addiction Research Foundation-The Journal, April 1, 1982

Cowboys' coach chides industry for alcohol ads

AUSTIN, TX — Dallas Cowboys coach Tom Landry says he would like to counteract the association between drinking and sports presented in alcohol advertising.

"They do glamorize it — you're not living with gusto and all the rest unless you have a beer," Mr Landry said.

He was speaking at the kickoff in February, of a statewide youth alcohol-abuse prevention effort by the Texas Commission on Alcoholism. The campaign is part of the 1982 alcohol-abuse prevention campaign by the United States National Institute

on Alcohol Abuse and Alcoholism (NIAAA).

Mr Landry said: "The number one drug of choice and abuse among our children today is not rolled in a paper, not bought in an alley, but is often found in the ice box or kitchen cabinet —



Landry: beer adds gusto.

that drug is alcohol."

In 1980, more than 18,000 Texans aged 17 years and under were arrested for alcohol-related offences — 1,697 for DWI (driving while intoxicated), 4,623 for liquor law violations, and 11,802 for drunkenness. Six of the drunk-driving arrests were of children under 10 years, as were five liquor law violation arrests, and 41 drunkenness arrests.

State Representative Frank Madla, a San Antonio Democrat, also spoke as chairman of the House subcommittee on Alcohol and Drug Abuse among Texas Youth. He called for public input to a series of subcommittee hearings throughout the state, and he suggested legislative recommendations are likely to result from the hearings.

Topeka Capital-Journal October 3, 1980

A double standard

To the Editor:

In health class we study drugs and drug addiction. During class last week it was stated that cigarettes are not to be advertised on television. Alcoholic beverages are often advertised on TV.

By reading, we found that alcohol is just as addictive as cigarette smoking. Why then is one allowed to be advertised and not the other? — KELLY WALKER, 2220 Brookfield.

Duren sober to alcohol

NEW YORK (UPI) — Ryne Duren, for whom every night used to be like New Year's Eve, hasn't had a drink in 14 years.

That means you never see him in bars anymore.

It also means he has more time to spend at home where he can watch the games on TV, and some of those popular beer commercials he has been looking at have him shaking his head rather sadly.

"When will professional sports begin to level with all the kids and tell them the real truth about alcohol?" he wants to know. "You don't treat an alcohol problem by drinking beer."

He nearly killed himself drinking. Mostly beer, plus a lot of other stuff while he was pitching for the Orioles, A's, Yankees, Angels, Phillies, Reds and Senators from 1954 through 1965. Duren was the Nolan Ryan of his day. He could throw the ball. He also could put away that beer. Night after night. Had he not finally quit consuming it, along with other forms of alcohol, the 52-year-old former fireballer figures he'd no longer be around today.

NOW HE'S AN "ex-user," is the way he puts it, but he's not one of those nagging reformers or breast-

beating evangelists. He did such a remarkable job of turning himself around that he wound up directing a comprehensive treatment program for alcoholics at a special rehabilitation center in Stoughton, Wis.

After doing that almost 10 years, Duren wanted to get into the educational area more, and he's serving as an alcoholism consultant and goes around the country now making speeches before various associations of educators.

"Do you know that more teenagers in this country die from alcohol abuse than from any other cause?" Duren says. "It's absolutely true ..."

"The best high school player I ever saw is doing 10 years for murder," he says. "I mention that because this kid was a practicing alcoholic and drug addict all through his highschool career."

CITING THE many beer commercials he sees and hears on TV and radio, Duren claims "the kids are getting all kinds of mixed messages about alcohol."

"It would seem to me that since so many representatives of professional sports are appearing in these commercials, somebody in professional sports has some

responsibility to see that the kids get the down side of the message as well. The way things are now, the kids don't know what to believe."

Major League baseball and the National Football League both use periodic 60-second televised spots to warn young people against the use of alcohol and drugs but, as Duren points out, those public service messages get far less exposure than the commercials.

A federal law passed in 1974 prohibits "active athletes" from endorsing alcoholic beverages on radio or TV but there is nothing preventing former athletes or present managers, coaches or club officials from doing so.

SPECIFICALLY, Duren talks about those beer commercials featuring such sports personalities as Billy Martin, John Madden, Tom Lasorda, Marv Throneberry, Bubba Smith, Dick Butkus, Boog Powell, Tom Heinsohn, Bob Cousy and Gordie Howe among others.

"Look, I like Billy Martin. I think he's one great guy and I certainly don't intend to pick on him," Duren says. "I'm not against him making commercials. I don't blame him at all. I'd take the money, too."

Kansas City Kansan, July 29, 1982