

Approved 3/14/83
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m./p.m. on March 4, 1983 in room 254-E of the Capitol.

All members were present except: Senator Gannon, who was excused.

Committee staff present: Russell Mills, Legislative Research
June Windscheffel, Committee Secretary

Conferees appearing before the committee: General Thomas J. Kennedy, Director, Alcoholic Beverage Control
Jack Milligan, Kansas Association of Private Clubs
The Reverend Richard Taylor, Kansans for Life at its Best

SB328 - relating to Class B private club reciprocity; standard to qualify.

The Chairman recognized General Kennedy who distributed a Memorandum to the committee, dated March 4, 1983, concerning SB328. A copy is attached and a part of the record. (Attachment #1) The Director stated that this is a good bill and that the ABC recommends it be amended to provide that class B clubs be prohibited from forming new corporations to circumvent the intent and spirit of the gross receipts from food requirements.

They further recommend that language be added to K.S.A. 41-2637 to authorize the Director to review gross receipts from food sales quarterly or bi-annually so that the ABC could legally take appropriate remedial action against those clubs that frequently abuse the privilege of reciprocity. The suggested amendments to the statutes are also a part of Attachment #1.

SB328 reduces the 50% food requirement to 40%.

Jack Milligan, in representing the Kansas Association of Private Clubs appeared in support of SB328. His prepared statement is a part of the record. (Attachment #2) He said that they feel the results of lowering the food sales requirement to 40%, or preferably 30%, will be more convenient to the public and much less temptation for clubs to circumvent the law, and fewer collection and enforcement problems to the ABC.

The Reverend Taylor appeared in opposition to SB328. (Attachment #3)

Bingo Sub-Committee Report.

The Chairman thanked the sub-committee on bingo for its industrious study and labors: it is composed of Senator Winter, Chairman; and Senator Vidricksen and Senator Francisco. The Chairman recognized Senator Winter who gave the report of the sub-committee. He said that they had worked long and hard and had diligently studied the issues to determine the problems that might exist and the methods by which to address those problems. Senator Winter moved to approve the sub-committee report and the drafting bill prepared by the sub-committee and that the committee introduce it as a committee bill, and that it be referred back to this committee for the purpose of holding hearings and for further study of the issues. 2d by Senator Francisco. The motion carried.

Senator Parrish had a proposed bill relating to civic centers. It was moved to introduce it as a committee bill by Senator Morris. 2d by Senator Roitz. The motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m. ~~pm~~ on March 4, 19⁸³.

Senator Francisco moved to introduce a proposed amendment to the statute prohibiting pit-dog fighting. 2d by Senator Morris. The motion carried.

Senator Daniels moved that the Minutes of the meeting of March 3, 1983, be approved. 2d by Senator Vidricksen. Motion carried.

The meeting adjourned at 12:00 noon.

MEMORANDUM

*Minutes of 3/4/83
Attachment #1*

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

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Senate Bill 328

DATE: March 4, 1983

PURPOSE

Senate Bill 328, if enacted in its present form, is an act concerning licensing and regulation of certain clubs; reciprocal privileges; amending K.S.A. 41-2601 and 41-2624 and repealing the existing sections.

PERSPECTIVE

1. K.S.A. 41-2601 relating to Definitions, defines "Restaurant" to mean a licensed food service establishment, as defined by K.S.A. 1979 Supp. 36-501 and amendments thereto, which, as determined by the director, derives not less than fifty percent (50%) of its gross receipts in each calendar year from the sale of food for consumption on the club premises.

Senate Bill 328 amends this definition of restaurant as used in K.S.A. 41-2637, the 50% standard or gross receipts in food shall be reduced to 40%.

K.S.A. 41-2637 states: "any two or more class A clubs, or any two or more class B clubs which are restaurants, may permit, by an agreement filed with and approved by the director, the members of each such club to have access to all other clubs which are parties to such agreement. The privileges extended to the visiting members of other clubs under such an agreement shall be determined by the agreement, and, if the agreement so provides, any club which is a party to such agreement may sell and offer for sale, to any person who is a member of another club which is a party to such agreement, alcoholic liquor for consumption on the licensed premises by such person or by guests accompanying such person."

2. K.S.A. 41-2624 relates to multiple licensing for class "B" clubs. This statute states that no person holding a class B club license shall be permitted to receive another class B club license, except that a license for a class B club located in a licensed food service establishment, as defined in K.S.A. 36-501 and amendments thereto, may be issued to a person who holds licenses for other class "B" clubs located in licensed food service establishments, if not less than 50% of the gross receipts of each such club and food service establishment are derived from the sale of food for consumption on the premises of such club and food service establishment.

Senate Bill 328 reduces this 50% requirement to 40%.

COMMENTS AND/OR RECOMMENDATIONS

Senate Bill 328 is a good bill and we recommend it be favorably considered.

The Director of Alcoholic Beverage Control recommends that K.S.A. 41-2637 be amended to provide that class B clubs are prohibited from forming new corporations, which they presently are doing, to circumvent the intent and spirit of the gross receipts from food requirements.

The Director further recommends that language be added to K.S.A. 41-2637 to authorize the Director to review gross receipts from food sales quarterly or bi-annually so that we could legally take appropriate remedial action against those clubs who frequently abuse the privilege of reciprocity.

Attached hereto is sample language for amending K.S.A. 41-2637 by adding new section c and d to implement the above proposals.

Respectfully submitted,


THOMAS J. KENNEDY, DIRECTOR
Alcoholic Beverage Control Division

TJK:cjk

Amendments to K.S.A. 41-2637

- c. After six months of reciprocity, if a class "B" club's percentage of food sales is not within 10% of the annual required percentage of food sales to gross sales, the director may revoke the club's reciprocity status. Nothing contained herein prevents the director from revoking the club's reciprocity status at any time should the director determine that a club has failed to make a good faith effort to meet the requirements of reciprocity.

- d. No class "B" club is eligible to participate in reciprocity agreements if any stockholder owning more than 5% of the outstanding shares of the corporation holding the club license, or if any officer or director of the corporation holding the club license was a stockholder, officer, or director of any other corporation holding a club license under this act for the same premises, address, or location, which filed a gross receipts affidavit and failed to meet the requirements of reciprocity within the two years previous to the date of the filing of a current gross receipts affidavit.



Kansas Association of Private Clubs

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*Minutes of 3/4/83
Attachment #2*

SB 328

MARCH 4, 1983

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

Mr. Chairman, Members of the Committee. My name is Jack Milligan. I appear this morning in behalf of the Kansas Association of Private Clubs in support of SB 328.

The Legislature amended the private club laws a few years ago to permit clubs with 50% of their gross receipts predicated on food sales to reciprocate membership privileges with other clubs.

I am confident when I say a very large portion of Kansas citizens views this as a progressive step long overdue in our state. Finally, some semblance of normalcy and pragmatism prevailed! No longer was it necessary to purchase many individual and expensive club memberships just to enjoy a variety of dining establishments throughout our state. Whether you were an out-of-state guest, a Kansan traveling across the state for business or vacation, or simply desirous of dining at an eating establishment across town, the burden and expense of having to purchase memberships in all these instances was dramatically reduced with the advent of reciprocal membership privileges.

The difficult part was determining just which clubs should be permitted to reciprocate. With a lack of sufficient data to make its decision, the Legislature did the best it could and settled on the "50% of gross receipts predicated on food sales" provision. Needless to say, this decision was partly arbitrary.

Several years later we have the luxury of "hind sight" and find a substantial number of eating establishments genuinely struggling to meet the 50% level. No doubt the reciprocating establishments overwhelmingly approve of reciprocal privileges and certainly the public enjoys the benefits of such privileges. However, many, many of the establishments enjoying these arrangements find themselves struggling to meet the 50% level and in danger of losing their reciprocal privileges. When this happens, the public is the real loser!

Realistically a substantial number of dining establishments are struggling to survive. And survival being what it is sometimes places an establishment in the unenviable and tempting position of reporting food and liquor sales in less than an accurate manner.

Two bad things can result in an unfortunate case such as this:

1. Clubs may attempt to report a percentage of their liquor sales as food sales. Please remember food sales are subject to a 3% sales tax and liquor sold at clubs is subject to a 10% excise tax. Thus, potentially costing the state large amounts of excise tax it should otherwise be collecting on the sale of liquor.

2. Item #1 makes it extremely difficult for the Department of Revenue to perform its tax collecting responsibilities, as well as routine audits to determine tax liability.

I wish to assure you I know of no one in the club business who wants to be in the unfortunate position I just outlined. However, survival and reality being what they are have placed a sizable number of establishments in these unfortunate circumstances.

SB 328

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Submitted By: The Kansas Association of Private Clubs

I am confident lowering the food sales requirement to 40%, or preferably 30%, will dramatically lessen the number of dining establishments desirous of reciprocal privileges who are currently struggling or unable to achieve the 50% level.

I am confident the results of such action will be more reciprocal privileges and convenience enjoyed by the public, and much less temptation for clubs to consider circumvention of the law for the sake of survival, and fewer collection and enforcement problems incurred by the Department of Revenue and the ABC.

Therefore, the Kansas Association of Private Clubs vigorously encourages your support of lowering the 50% requirement to 30% or 40% via SB 328.

Thank you! I will be happy to address any questions the committee members might have.

Jack Milligan
Executive Director
Kansas Association of Private Clubs

Minutes of 3/4/83
Attachment #3

Hearing on Senate Bill 328, March 4, 1983
Senate Federal and State Affairs Committee

Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

The Kansas Supreme Court filed a decision on December 5, 1978, which declared unconstitutional a law voted on in 45 counties which would permit the sale of liquor by the drink to the public in restaurants doing 50% or more of their business in food.

It is interesting to read what was said in a dissenting opinion. Justice Holmes, with Justices Prager and Miller joining in his dissent, said the "OPEN SALOON. . . DOES PROHIBIT A CERTAIN TYPE OF PREMISES OR BUSINESS OPERATION, THAT IS, A PUBLIC BAR WHOSE PRINCIPAL BUSINESS IS THE SALE OF LIQUOR FOR CONSUMPTION ON THE PREMISES" which is different from "RESTAURANTS, WHOSE PRINCIPAL FUNCTION IS THE SALE OF FOOD."

If the legislature grants reciprocal privileges to clubs WHOSE PRINCIPAL BUSINESS IS THE SALE OF LIQUOR FOR CONSUMPTION ON THE PREMISES, WHOSE PRINCIPAL FUNCTION IS not THE SALE OF FOOD, then persons who are a member of one club anywhere in the state can go and drink anywhere in the state. Even the dissenters of the 1978 decision may find such a new law unconstitutional.

My drinking friends tell me they want to know which private club makes its money pushing alcohol and which clubs make food a major share of their business. Therefore it would be good to go in the other direction, require 60% of gross receipts for reciprocal clubs.

I understand other states have a solution to the enforcement problem. We could require the customers bill to have two columns for each item line. The price of alcoholic beverages would be in one column, food items in the other. The bill would have two totals and one grand total. An audit would determine if the 60% food and 10% tax requirement was fulfilled.

It is difficult to understand why dealers in this chemical crutch are concerned about being so close to the minimum that they might lose their reciprocal privileges. If they were genuine in their concern to not promote this popular social drug, they would make every effort to not even come near the minimum.

I am told the Utah system permits persons to have a drink with their meal, but alcohol consumption is not promoted because the private club does not make any profit on the drink. Persons are permitted to buy mini-bottles from a state operated outlet which they may take to their table and drink. The private club does not make any money on the drink so there is no motive for promoting consumption.

For the sake of public health and safety it would be good if Kansas private club laws moved in this direction - take the profit out of pushing alcohol.

Respectfully yours,

Richard Taylor