

Approved _____

Date

2/8/85

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. ~~approx~~ on February 7, 1985 in room 254-E of the Capitol.

All members were present ~~except~~ Senator Martin, who was excused.

Committee staff present:

Fred Carman, Revisor of Statutes
Russell Mills, Legislative Research
Emalene Correll, Legislative Research
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Senator Joseph Norvell
Joseph W. Snell, Executive Director, Kansas State Historical Society
Barbara Sabol, Secretary, Kansas Department of Health and Energy
Harold Spiker, Kansas Department of Health and Energy
Colonel Mahlon Weed, Division of Emergency Preparedness, Adjutant General
John Lamb, Director, Alcoholic Beverage Control

The Minutes of February 6, 1985, were approved as corrected on motion of Senator Arasmith, 2d by Senator Morris. Motion carried.

SB47 - Historical Society, rescinding authority admittance fees for historic properties.

The Chairman introduced Senator Joseph Norvell as the first conferee on SB47. He presented his prepared statement, which is Attachment #1 of these Minutes. He stated that two years ago the Kansas legislature wanted to determine whether or not charging admission fees to people to visit historical sites would affect attendance. The figures show that it does affect attendance. Although there has been a slight increase in revenues, these revenues do not make up for the decline in attendance at the historic sites.

Joseph W. Snell, Kansas State Historical Society, was the next conferee. His remarks include statement in support of not charging fees at historic sites, as well as other facts and figures relating to the subject. It is Attachment #2 of these Minutes.

SB20 - transportation of nuclear materials not subject to public record disclosure; re: Proposal No. 44.

The Chairman recognized Secretary Barbara Sabol who stated that a copy of the testimony on SB20 from the Kansas Department of Health and Environment had been distributed to Committee. She introduced Harold Spiker, of the KDHE Staff, to present the technical amendments of the bill. In essence the KDHE supports the recommendation but suggests the technical amendments. Their testimony is Attachment #3.

Colonel Mahlon Weed, Deputy Director of the Division of Emergency Preparedness of the Adjutant General's Office, was the next conferee. Colonel Weed's statement in support of SB20 is Attachment #4.

At the request of Senator Daniels a letter was introduced from Robert L. Weinkauff, Chief of Police, Topeka Police Department, and also signed by Lt. Lee Sipes, Topeka Police Lobbyist. The letter is their statement of support of SB20. It is Attachment #5.

The Chairman stated that this would conclude the hearings on SB20 and SB47.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m. ~~noon~~ on February 7, 1985

The Chairman then introduced John Lamb, Director, Alcoholic Beverage Control. Mr. Lamb has been asked to present an overview of the Alcoholic Beverage Control. He presented a statement dated January 14, 1985, re: History of ABC and Goals of the Director, Attachment #6. Also included in the packet is a Memorandum to Senator Edward Reilly, dated February 7, 1985, re: Agency Legislative Proposals, Attachment #7. Mr. Lamb answered questions from the Committee. Due to time, the Chairman asked that Mr. Lamb come back to the Committee tomorrow to discuss the legislative proposals.

The meeting adjourned at noon.

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

2/7/85
Attachment #1

COMMITTEE ASSIGNMENTS

MEMBER: AGRICULTURE
 TRANSPORTATION AND UTILITIES
 JOINT COMMITTEE ON ADMINISTRATIVE
 RULES AND REGULATIONS
 ADVISORY COMMITTEE ON AGING
 ELECTIONS
 LABOR, INDUSTRY AND SMALL
 BUSINESS

SENATOR
 JOSEPH F. NORVELL
 STATE SENATE—37TH DISTRICT
 ELLIS, TREGO, RUSH, PAWNEE, NESS,
 LANE, EDWARDS, AND HODGEMAN
 BOX 991
 HAYS, KANSAS 67601

RE: SB 47 -- VISITATION AT HISTORIC SITES BEFORE AND AFTER THE INSTITUTION
 OF ADMISSION FEES

THE 1982 LEGISLATURE AUTHORIZED THE STATE HISTORICAL SOCIETY TO BEGIN CHARGING ADMITTANCE FEES AT SELECTED SITES FOR A LIMITED PERIOD OF TIME. THE SOCIETY HAS BEGUN THE PROGRAM AT TWO OF THE EIGHTEEN HISTORICAL SIGHTS: FRONTIER HISTORICAL PARK IN HAYS, AND JOHN BROWN MEMORIAL CABIN IN OSAWATOMIE. FISCAL YEAR 1984 WAS THE FIRST YEAR ADMITTANCE FEES WERE CHARGED. (EFFECTIVE 7/1/83) BELOW IS A COMPARISON OF VISITATION AND COLLECTION IN FY 1983 AND FY 1984.

AT FRONTIER HISTORICAL PARK, 28,819 PERSONS VISITED IN FY 1983, THE LAST YEAR BEFORE FEES WERE CHARGED. IN FY 1984 18,406 PERSONS VISITED THE PARK, A DECLINE OF 10,413 PERSONS - 36.1 PERCENT. TOTAL COLLECTIONS IN FY 1983 WERE \$1,512. IN FY 1984 THEY WERE \$6,434, AN INCREASE OF \$4922. THROUGH THE FIRST HALF OF FY 1985, 11,107 PERSONS HAVE VISITED THE PARK BRINGING IN COLLECTIONS OF \$3,995.

AT JOHN BROWN MEMORIAL PARK, 3,973 PERSONS VISITED IN FY 1983. IN FY 1984, ATTENDANCE DROPPED TO 2,692, A DECLINE OF 1,281 PERSONS - 32.2 PERCENT. COLLECTIONS WERE \$221, in FY 1983. IN FY 1984 COLLECTIONS TOTALLED \$683., AN INCREASE OF \$462. FOR THE FIRST HALF OF FY 1985, 1,160 PERSONS HAVE VISITED, BRINGING IN COLLECTIONS OF \$462.

COMBINING THE TWO SITES I FOUND A TOTAL DROP IN ATTENDANCE OF 11,694 PERSONS IN FY 1984, A DECLINE OF 36 PERCENT, WITH TOTAL COLLECTIONS INCREASING BY \$5384. WHILE VISITATION FELL AT THESE TWO SITES BETWEEN FY 1983 AND FY 1984, VISITATION AT ALL OTHER SITES COMBINED INCREASED BY 5 PERCENT.

<u>VISITATION</u>	<u>FY 1983</u>	<u>FY 1984</u>	<u>CHANGE</u>	<u>% CHANGE</u>
FRONTIER	28,819	18,406	(10,413)	(36.1)
JOHN BROWN	3,973	2,692	(1,281)	(32.2)

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SB ⁴⁷~~62~~ - HISTORICAL SITES

THE BOTTOM LINE IS THIS:

TWO YEARS AGO THE KANSAS LEGISLATURE WANTED TO FIND OUT WHETHER OR NOT CHARGING ADMISSION FEES TO PEOPLE WHO WANTED TO VISIT HISTORICAL SITES WOULD AFFECT ATTENDANCE. THE ANSWER IS CLEARLY YES. ATTENDANCE AT THE TWO SITES WHERE ADMISSION FEES WERE CHARGED, ON THIS EXPERIMENTAL BASIS, HAS SEEN A DECLINE OF 36 PERCENT OF THOSE PEOPLE VISITING THE TWO HISTORICAL SITES AS MENTIONED ABOVE.

CONSIDERING THE FACT, THAT WE ARE MAKING A BIG PUSH IN THE STATE OF KANSAS TO INCREASE TOURISM, AND CONSIDERING THE FACT THAT WE WANT TO PRESENT THE HISTORY OF KANSAS TO AS MANY PEOPLE AS POSSIBLE, IT IS TIME TO PASS LEGISLATION TO ONCE AGAIN MAKE ALL HISTORICAL SITES IN THE STATE FREE TO THOSE INDIVIDUALS WHO DESIRE TO VISIT.

WHILE THERE HAS BEEN A SLIGHT INCREASE IN REVENUES GENERATED, THESE INCREASED REVENUES DO NOT MAKE UP FOR THE DRASTIC DECLINE IN ATTENDANCE TO OUR HISTORICAL SITES.

2/7/85
Attachment #2

STATEMENT OF JOSEPH W. SNELL, EXECUTIVE DIRECTOR OF THE
KANSAS STATE HISTORICAL SOCIETY BEFORE THE
SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
FEBRUARY 6, 1985, IN RE SENATE BILL NO. 47.

Mr. Chairman and members of the Committee, ladies and gentlemen: In July 1983, the Kansas State Historical Society began charging an entry fee at Frontier (Fort Hays) Historical Park and the John Brown Cabin Historic site in Osawatomie at the request of the state legislature. The legislature asked that we choose two of the 18 state-owned Society administered sites and conduct an experimental program involving entry fees for two years. The Society was given the right to exempt certain persons including dues paying members of the Society, school groups, elderly persons, etc.

We chose Fort Hays and John Brown because they were the most visited and least visited sites and we thought this would give a good cross section of what an entry fee might do to the attendance at the other sites. After considerable thought we settled upon a fee of \$1.00 for adults and 50¢ for children. This was in line with what other states were charging at historic sites in their areas.

We are now in the fourth quarter of this two year trial period and there is no doubt that charging entry fees has lowered visitation at both sites. It has also increased collections. All site collections prior to 1984 were voluntary.

At Fort Hays total visitation in fiscal year 1983, the last year for which no entry fee was charged, was 28,819 persons. We received voluntary contributions of \$1,512 that year. In fiscal year 1984 visitation dropped to 18,406 or by 36%. Total collections for fiscal year 1984 were \$6,434. Visitation in fiscal year 1985 seems to be going up slightly but collections have gone down slightly.

At John Brown Memorial Park fiscal 1983 visitation was 3,973. In 1984 it was 2,692, a drop of 32%. Total voluntary collections at John Brown in 1983 were \$221 while collections in 1984 were \$683. At John Brown visitation in 1985 appears to be increasing as are collections. On short term it is difficult to compare figures because of weather patterns and other external forces.

For further information, please see the attached chart showing visitation at both sites.

Administration of a fee program at the historic sites which we administer is difficult at best. At Fort Hays, for instance, some 40 acres not surrounded by fence may be entered from any direction. Because of the size of the staff at Fort Hays, we are not able to collect from all visitors who have obviously not paid. We thus rely to a great extent on the honor system.

At John Brown the situation is a little different in that the cabin is located within another structure. Our single attendant can block entry to anyone who does not pay.

At Fort Hays it is our chief curator's understanding that the fee has affected local residents more than visitors from out-of-state. It is his feeling that local residents who used to come back to Fort Hays time and time again, often bringing families and visitors from out of state, now do not return because they have paid once, they have seen the fort, and they do not want to pay again. At John Brown there is no discernable pattern change.

We at the State Historical Society can see the merits of both sides of this situation. I believe that charging fees for entry to state owned historic sites must be a state policy decision and I am pleased to see the issue is up for discussion before the legislature. It appears to me that we

must decide whether we want to promote an appreciation of Kansas history to more people at state expense or to fewer people at less state but more visitor expense.

I do have some personal concerns which I would like to share with you.

I am, by training and profession, an historian. Whenever I travel I visit as many historic sites as I can. Very seldom am I charged an entry fee to federally owned and operated historic sites, most of which are of outstanding significance to our history, but quite often I am asked to pay to visit almost insignificant state operated historic sites. As an out-of-state visitor this offends me, and many times I have turned around at the gate and not visited the site because I refused to pay even a small fee. It appeared to me that if the state were trying to promote an interest in its own history and its significance in the development of the American nation, then it should be willing to allow me, as a nonresident, free entry. If I pay an entry fee I consider that I am actually paying to be educated in the merits of (or "propagandized" by) the state in which I am visiting.

During my life I have traveled over the United States a great deal and from earliest days it has been readily apparent to me that Kansas does not enjoy an enviable reputation among residents of other states. In fact, when I was in the Army and stationed at Fort Monmouth, New Jersey, Kansas soldiers were extremely reluctant to admit from whence they came while Texans, Californians, Alaskans, and even New Yorkers proudly proclaimed their residence.

I know that Kansas has one of the most interesting histories of any of the states in the nation. Not only were we astraddle two great overland migration routes--the Oregon trail and the Santa Fe trail--and thus served as

a gateway to Western settlement but for seven years the Civil War was actually fought here before it became a national struggle. Kansas has played a major role in emigrant Indian settlement, the Indian wars, railroad construction and development, progressive legislation, education, the great cattle trail industry, and countless other areas of our national history.

The teaching of Kansas history is not required in our schools and the little state history that our students do receive is generally not much more than a unit surrounding Kansas day each January.

Because I am proud of Kansas I would like to see us promote the history of our state in the best manner possible. One of the ways in which I think we can do that is to maintain state-owned historic properties in a professional manner and make them as accessible to the public as possible.

Over the last three years the State Historical Society has been inaugurating public programs at the sites and visitation generally is climbing at a pleasing rate. Our citizens and persons from other states are learning, through the historic sites and other Historical Society programs, what a significant and fascinating history we do have. Instead of placing a prohibitive barrier in the form of a fee at our historic sites I would rather we welcome our own citizens and those of other states with open arms.

Please understand that these are my personal feelings. However, if it had been left to me I would never have inaugurated a fee at any of the state-owned historic sites which we administer or at any of the museums which we operate.

Last year it cost the state about \$1.75 per each Kansan for all of the programs which the Kansas State Historical Society operates. We spent an additional 21 cents per Kansan of monies secured from private sources. It seems to me this is a small cost indeed to promote an appreciation of our state and the contributions of her citizens.

KANSAS STATE HISTORICAL SOCIETY

SUMMARY COMPARISON OF

SITE VISITATION AND COLLECTIONS

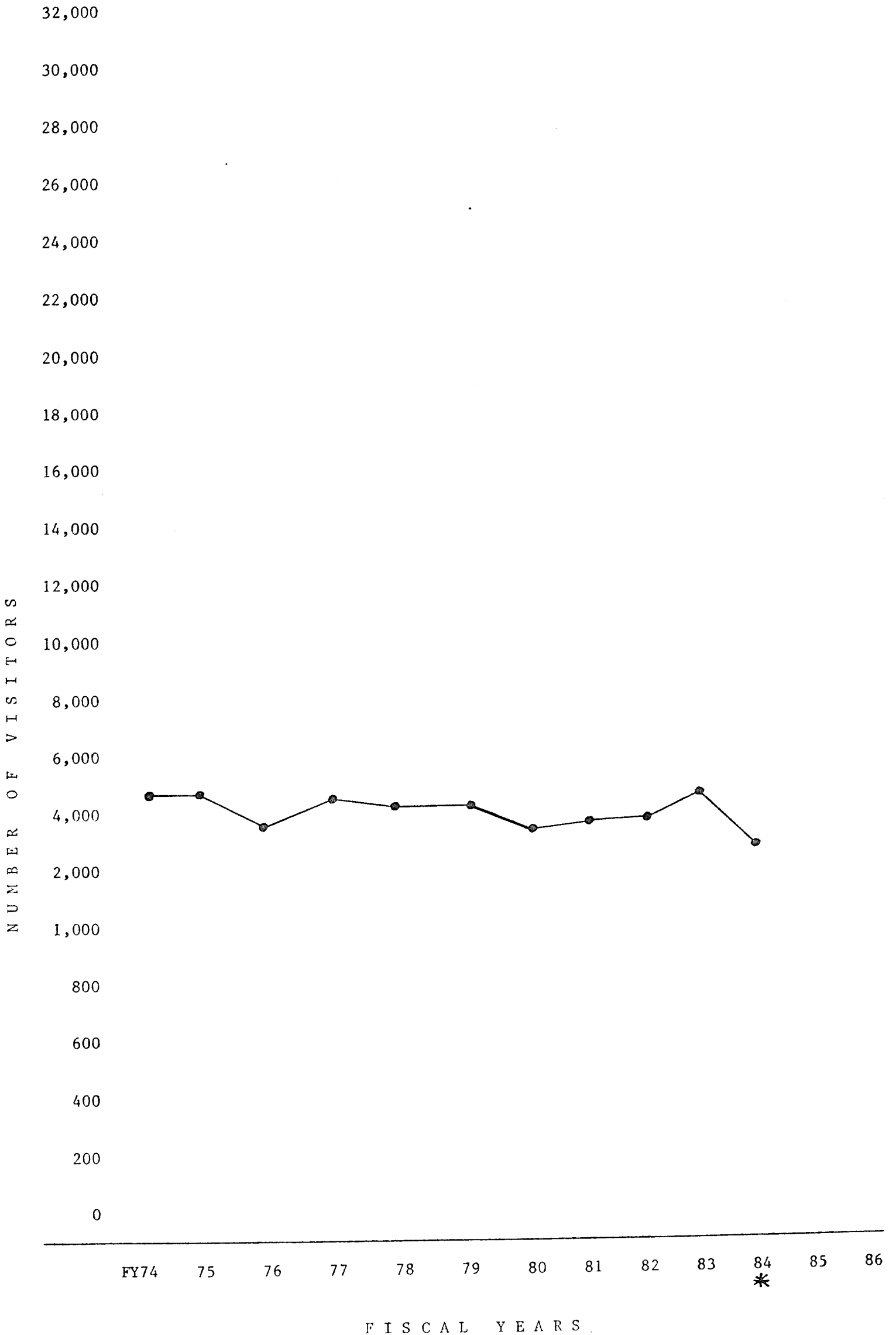
FY 1983 - FY 1984 - FY 1985

	FY 1983 Total Visitation	FY 1983 Total Collections	FY 1984 Total Visitation	FY 1984 Total Collections	FY 1984 1st Quarter Visitation	FY 1984 1st Quarter Collections	FY 1985 1st Quarter Visitation	FY 1985 1st Quarter Collections	FY 1984 2nd Quarter Visitation	FY 1984 2nd Quarter Collections	FY 1985 2nd Quarter Visitation	FY 1985 2nd Quarter Collections
Frontier Historical Park	28,819	\$1,512	18,406	\$6,434	7,707	\$3,275	8,772	\$3,353	2,369	\$ 734	2,335	\$ 642
John Brown Memorial Park	3,973	221	2,692	683	543	280	624	327	352	83	536	135

	FY 1984 6 Months Visitation	FY 1984 6 Months Collections	FY 1985 6 Months Visitation	FY 1985 6 Months Collections
Frontier Historical Park	10,076	\$4,009	11,107	\$3,995
John Brown Memorial Park	895	363	1,160	462

Fees charged, effective July 1, 1983

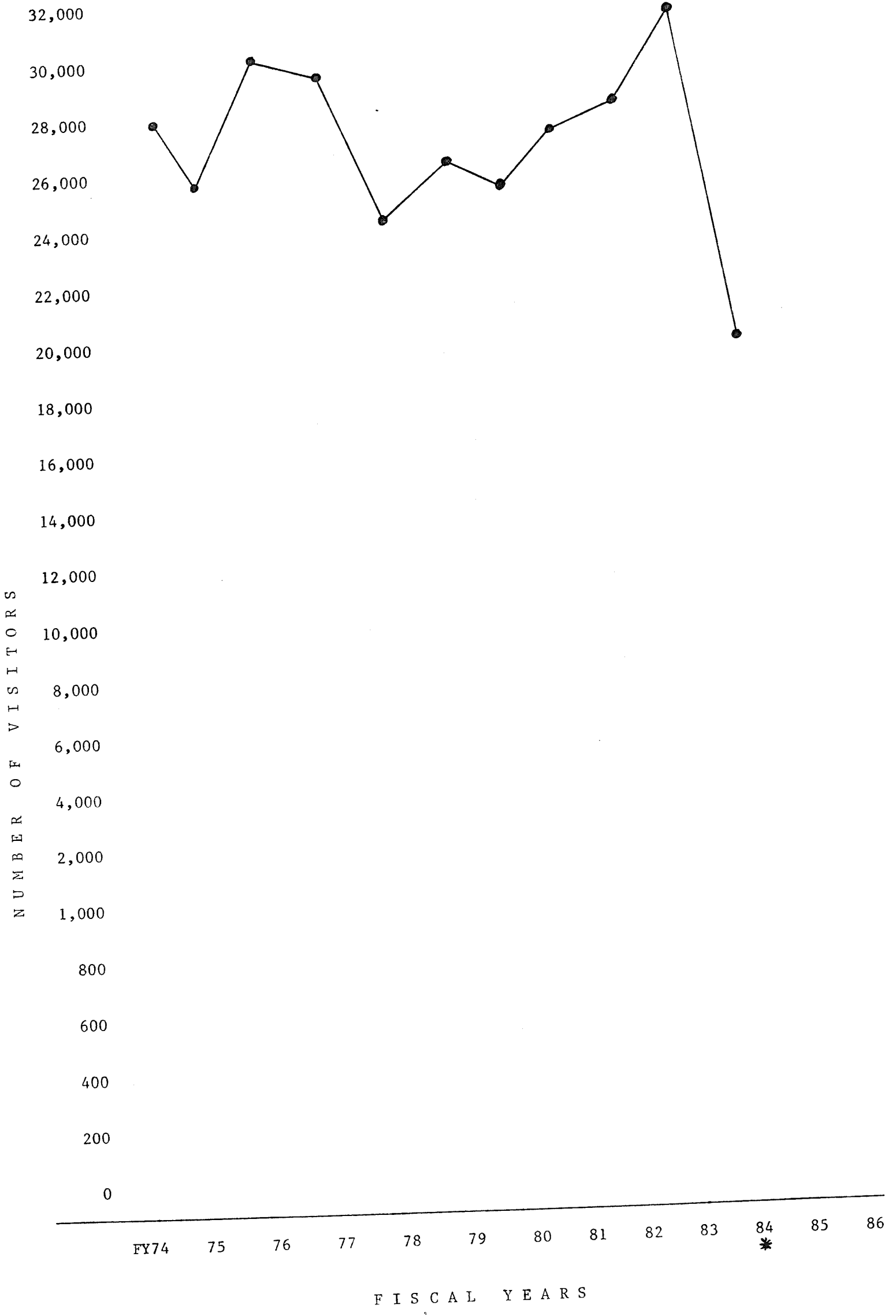
S I T E V I S I T A T I O N



JOHN BROWN MEMORIAL PARK -- OSAWATOMIE, KS

* Admission Fee Charged

S I T E V I S I T A T I O N



FRONTIER HISTORICAL PARK -- HAYS, KS

*Admission Fee Charged

2/7/85
Attachment #3

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL 20

RE: PROPOSAL 44, PROPOSED AMENDMENT TO K.S.A. 1984 Supp. 45-221

This is the official position taken by the Kansas Department of Health and Environment on Senate Bill 20.

BACKGROUND INFORMATION:

Current federal regulations (10 CFR) require licensees of the U.S. Nuclear Regulatory Commission to notify the governor of each state, or his designee, prior to the shipment of spent reactor fuel (10 CFR 73.37(f)) or high level nuclear wastes (10 CFR 71.97) into or through that state.

The Division of Emergency Preparedness of the Adjutant General's Department (DEP/AGD) has been designated by the Governor to receive the required notification for shipments of spent reactor fuel or high level nuclear waste that are scheduled to enter the State of Kansas. They in turn notify KDHE/BAQ&RC.

10 CFR 73.37(g) requires that state officials safeguard information regarding shipments of irradiated or spent reactor fuel against unauthorized disclosure as specified in 10 CFR 73.21. Section 1, K.S.A. 1984 Supp. 45-221(a)(1) is consistent with this requirement. However, there is no such safeguard requirement for high level nuclear waste as defined by 10 CFR 71.97(b).

The issue is apparently whether or not the proposed amendment to the public records law is required in order to permit state agencies to safeguard information regarding shipments of spent reactor fuel and whether such safeguards are needed at all for information regarding shipments of high level waste, since they are not provided for by federal regulations.

STRENGTHS:

An appropriate provision of this type in K.S.A. 45-221(a) would insure that state agencies are permitted to safeguard information provided to them relative to the shipment of spent reactor fuel and high level radioactive waste through the State of Kansas.

The proposed revision in K.S.A. 45-221(a) would have no apparent fiscal or manpower impact on the state government.

WEAKNESSES:

It is assumed that the intent of the proposed amendment to K.S.A. 45-221 is to permit safeguarding of information received by state officials regarding preshipment notification of spent reactor fuel and/or high level nuclear waste through the State of Kansas. With this in mind, the following weaknesses are apparent:

1. The term "nuclear materials" is very broad and would technically include all radioactive materials. More specific terminology should be used.
2. Preshipment notification of spent reactor fuel and high level nuclear waste shipments are required by 10 CFR 71.97 and 10 CFR 73.37(f) to be made to the governor of affected states, or his designee, by the NRC licensees and not the federal government.
3. There is no need to safeguard information on or schedules for such shipments after they have been completed. However, no time limit for safeguarding such information or scheduling is provided for in the proposed amendment.
4. Shipments of spent reactor fuel and high level nuclear waste could pass through the state which are not enroute to or from a nuclear generating facility. As written, the proposed amendment would apply only to shipments enroute to or from nuclear generating facilities.

DEPARTMENT'S POSITION:

The Department of Health and Environment supports the proposed amendment to K.S.A. 45-221(a) but makes the following recommendations:

1. Irradiated or spent reactor fuel and nuclear waste as defined by 10 CFR 71.97(b) should be substituted for the term "nuclear materials".
2. A time limit of 10 days after a shipment or last in a series of related shipments is completed should be included in the proposed amendment.
3. The proposed amendment should be corrected to specify information, records or schedules provided by licensees of the U.S. Nuclear Regulatory Commission as required by 10 CFR 71.97 and 10 CFR 73.37(f), rather than "authorities of the federal government".
4. The reference to shipments to or from a nuclear reactor should be deleted.

§ 71.97 Advance notification of shipment of nuclear waste.

(a) Except as specified in paragraph (b) of this section, prior to the transport or delivery to a carrier for transport of licensed material outside the confines of the licensee's plant or other place of use or storage, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment to, through, or across the boundary of the state.

(b) Advance notification is required only when—

(1) The licensed material is required by this part to be in Type B packaging for transportation;

(2) The licensed material other than irradiated fuel is being transported to, through, or across state boundaries to a disposal site or to a collection point for transport to a disposal site;

(3) The quantity of licensed material in a single package exceeds:

(i) 5,000 curies of special form radionuclides;

(ii) 5,000 curies of uncompressed gases of Argon-41, Krypton-85m, Krypton-87, Xenon-131m, or Xenon-135;

(iii) 50,000 curies of Argon-37, or of uncompressed gases of Krypton-85 or Xenon-133, or of Hydrogen-3 as a gas, as luminous paint, or adsorbed on solid material;

(iv) 20 curies of other non-special form radionuclides for which A_2 is less than, or equal to four curies; or

(v) 200 curies of other non-special form radionuclides for which A_2 is greater than four curies; and

(4) The quantity of irradiated fuel is less than that subject to advance notification requirements of 10 CFR Part 73.

(c) *Procedures for submitting advance notification.* (1) The notification must be

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PART 71 • PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIA

made in writing to the office of each appropriate governor or governor's designee and to the Director of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter.

(2) A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(3) A notification delivered by messenger must reach the office of the governor or of the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the Federal Register on June 30, 1983 (48 FR 30221).

(ii) The list will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available upon request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(4) The licensee shall retain a copy of the notification as a record for one year.

(d) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of nuclear waste must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the nuclear waste shipment;

(2) A description of the nuclear waste contained in the shipment, as required by the regulations of DOT in 49 CFR 172.202 and 172.203(d);

(3) The point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;

(4) The seven-day period during which arrival of the shipment at state boundaries is estimated to occur;

(5) The destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(6) A point of contact with a telephone number for current shipment information.

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee in accordance with this section will not be met, shall telephone a responsible individual in the office of the governor of the state or of

the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for one year.

(f) *Cancellation notice.* (1) Each licensee who cancels a nuclear waste shipment for which advance notification has been sent, shall send a cancellation notice to the governor of each state or the governor's designee previously notified and to the Director of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of Part 73 of this chapter.

(2) The licensee shall state in the notice that it is a cancellation and shall identify the advance notification which is being cancelled. The licensee shall retain a copy of the notice as a record for one year.

§ 73.21 Requirements for the protection of safeguards information.

(a) General performance requirement.

Each licensee who (1) possesses a formula quantity of strategic special nuclear material, or (2) is authorized to operate a nuclear power reactor, or (3) transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure. To meet this general performance requirement, licensees and persons subject to this section shall establish and maintain an information protection system that includes the measures specified in paragraphs (b) through (i) of this section. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

(b) Information to be protected. The specific types of information, documents, and reports that shall be protected are as follows:

(1) Physical Protection at Fixed Sites. Information not otherwise classified as Restricted Data or National Security Information relating to the protection of facilities that possess formula quantities of strategic special nuclear material, and power reactors. Specifically: (i) The composite physical security plan for the

PART 73 • PHYSICAL PROTECTION OF PLANTS AND MATERIALS

nuclear facility or site.

(ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical protection system.

(iii) Details of alarm system layouts showing location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms.

(iv) Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules.

(v) Details of the on-site and off-site communications systems that are used for security purposes.

(vi) Lock combinations and mechanical key design.

(vii) Documents and other matter that contain lists or locations of certain safety-related equipment explicitly identified in the documents as vital for purposes of physical protection, as contained in physical security plans, safeguards contingency plans, or plant specific safeguards analyses for production or utilization facilities.

(viii) The composite safeguards contingency plan for the facility or site.

(ix) Those portions of the facility guard qualification and training plan which disclose features of the physical security system or response procedures.

(x) Response plans to specific threats detailing size, disposition, response times, and armament of responding forces.

(xi) Size, armament, and disposition of on-site reserve forces.

(xii) Size, identity, armament, and arrival times of off-site forces committed to respond to safeguards emergencies.

(2) *Physical protection in transit.* Information not otherwise classified as Restricted Data or National Security Information relative to the protection of shipments of formula quantities of strategic special nuclear material and spent fuel. Specifically: (i) The composite transportation physical security plan.

(ii) Schedules and itineraries for specific shipments. (Routes and quantities for shipments of spent fuel are not withheld from public disclosure. Schedules for spent fuel shipments may be released 10 days after the last shipment of a current series.)

(iii) Details of vehicle immobilization features, intrusion alarm devices, and communication systems.

(iv) Arrangements with and capabilities of local police response forces, and locations of safe havens.

(v) Details regarding limitations of radio-telephone communications.

(vi) Procedures for response to safeguards emergencies.

(3) *Inspections, audits and evaluations.* Information not otherwise

classified as National Security Information or Restricted Data relating to safeguards inspections and reports. Specifically:

(i) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system. Information regarding defects, weaknesses or vulnerabilities may be released after corrections have been made. Reports of investigations may be released after the investigation has been completed, unless withheld pursuant to other authorities, e.g., the Freedom of Information Act (5 U.S.C. 552).

(4) *Correspondence.* Portions of correspondence insofar as they contain Safeguards Information specifically defined in paragraphs (b)(1) through (b)(3) of this paragraph.

(c) *Access to Safeguards Information.*

(1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;

(ii) A member of a duly authorized committee of the Congress;

(iii) The Governor of a State or designated representative;

(iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

(v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

(vi) An individual to whom disclosure is ordered pursuant to § 2.744(e) of this chapter.

(2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

(d) *Protection while in use or storage.*

(1) While in use, matter containing Safeguards Information shall be under the control of an authorized individual.

(2) While unattended, Safeguards Information shall be stored in a locked security storage container. Knowledge of lock combinations protecting Safeguards Information shall be limited to a minimum number of personnel for operating purposes who have a "need to know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this section.

(e) *Preparation and marking of documents.* Each document or other matter that contains Safeguards Information as defined in paragraph (b) in this section shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of protected information (portion marking is not required for the specific items of information set forth in paragraph § 73.21(b) other than guard qualification and training plans and correspondence to and from the NRC). Documents and other matter containing Safeguards Information in the hands of contractors and agents of licensees that were produced more than one year prior to the effective date of this amendment need not be marked unless they are removed from storage containers for use.

(f) *Reproduction and destruction of matter containing Safeguards Information.* (1) Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator.

(2) Documents or other matter containing Safeguards Information may be destroyed by any method that assures complete destruction of the Safeguards Information they contain.

(g) *External transmission of documents and material.* (1) Documents or other matter containing Safeguards Information, when transmitted outside an authorized place of use or storage, shall be packaged to preclude disclosure of the presence of protected information.

(2) Safeguards Information may be transported by messenger-courier, United States first class, registered, express, or certified mail, or by any individual authorized access pursuant to § 73.21(c).

(3) Except under emergency or extraordinary conditions, Safeguards Information shall be transmitted only by protected telecommunications circuits (including facsimile) approved by the NRC. Physical security events required to be reported pursuant to § 73.71 are considered to be extraordinary conditions.

(h) *Use of automatic data processing (ADP) systems.* Safeguards Information may be processed or produced on an ADP system provided that the system is self-contained within the licensee's or his contractor's facility and requires the use of an entry code for access to stored information. Other systems may be used if approved for security by the NRC.

(i) *Removal from Safeguards Information category.* Documents originally containing Safeguards Information shall be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this section.

46 FR 51718

46 FR 51718

46 FR 51718

PART 73 • PHYSICAL PROTECTION OF PLANTS AND MATERIALS

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(a) *Performance objectives.* (1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel in excess of 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding, shall establish and maintain, or make arrangements for, and assure the proper implementation of, a physical protection system for shipments of such material that will achieve the following objectives:

(i) Minimize the possibilities for radiological sabotage of spent fuel shipments, especially within heavily populated areas; and

(ii) Facilitate the location and recovery of spent fuel shipments that may have come under the control of unauthorized persons.

(2) To achieve these objectives, the physical protection shall:

(i) Provide for early detection and assessment of attempts to gain unauthorized access to, or control over, spent fuel shipments;

(ii) Provide for notification to the appropriate response forces of any spent fuel shipment sabotage attempts; and

(iii) Impede attempts at radiological sabotage or spent fuel shipments within heavily populated areas, or attempts to illicitly move such shipments into heavily populated areas, until response forces arrive.

(b) *General requirements.* To achieve the performance objectives of paragraph (a) of this section, a physical protection system established and maintained, or arranged for, by the licensee shall:

(1) Provide for notification of the Nuclear Regulatory Commission in advance of each shipment, in accordance with § 73.72 of this part.

(2) Include procedures for coping with circumstances that threaten deliberate damage to a spent fuel shipment and with other safeguards emergencies.

(3) Include instructions for each escort that, upon detection of the abnormal presence of unauthorized persons, vehicles or vessels in the vicinity of a spent fuel shipment, or upon detection of a deliberately induced situation that has the potential for damaging a spent fuel shipment, the escort will:

(i) Determine whether or not a threat exists;

(ii) Assess the extent of the threat, if any;

(iii) Inform local law enforcement agencies of the threat and request assistance; and

(iv) Implement the procedures developed in accordance with paragraph (b)(2) of this section.

(4) Include a communications center at a designated location, which will be staffed continuously by at least one individual who will monitor the progress of the spent fuel shipment and will notify the appropriate agencies in the event a safeguards emergency should arise.

(5) Provide for maintenance of a written log by the escorts and communications center personnel, for each spent fuel shipment, which will include information describing the shipment and significant events that occur during the shipment, and will be available for review by authorized NRC personnel for a period of at least 1 year following completion of the shipment.

(6) Provide that arrangements have been made with local law enforcement agencies along the routes of road and rail shipments, and at U.S. ports where vessels carrying spent fuel shipments are docked, for their response to an emergency or a call for assistance.

(7) Provide for advance approval by the NRC of the routes used for road and rail shipments of spent fuel, and of any U.S. ports where vessels carrying spent fuel shipments are scheduled to stop.

(8) Provide that shipments are planned so that scheduled intermediate stops are avoided to the extent practicable.

(9) Provide that at least one escort maintains visual surveillance of the shipment during periods when the shipment vehicle is stopped, or the shipment vessel is docked.

(10) Provide that escorts (other than members of local law enforcement agencies, or ship's officers serving as unarmed escorts) have successfully completed the training required by Appendix D of this part.

(11) Provide that shipment escorts make calls to the communications center at least every 2 hours to advise of the status of the shipment for road and rail shipments, and for sea shipments while shipment vessels are docked at U.S. ports.

(c) *Shipments by road.* In addition to the provisions of paragraph (b), the physical protection system for any portion of a spent fuel shipment that is by road shall provide that:

(1) A transport vehicle within a heavily populated area is:

(i) Occupied by at least two individuals, one of whom serves as escort, and escorted by an armed member of the local law enforcement agency in a mobile unit of such agency; or

(ii) Led by a separate vehicle occupied by at least one armed escort, and trailed

by a third vehicle occupied by at least one armed escort.

(2) A transport vehicle not within any heavily populated area is:

(i) Occupied by at least one driver and one other individual who serves as escort; or

(ii) Occupied by a driver and escorted by a separate vehicle occupied by at least two escorts; or

(iii) Escorted as set forth in paragraph (c)(1) of this section.

(3) Escorts have the capability of communicating with the communications center, local law enforcement agencies, and one another, through the use of:

(i) A citizens band (CB) radio available in the transport vehicle and in each escort vehicle;

(ii) A radiotelephone or other NRC-approved equivalent means of two-way voice communications available in the transport vehicle or in an escort vehicle committed to travel the entire route; and

(iii) Citizens band (CB) radio and normal local law enforcement agency radio communications in any local law enforcement agency mobile units used for escort purposes.

(4) The transport is equipped with NRC-approved features that permit immobilization of the cab or cargo-carrying portion of the vehicle.

(5) The transport vehicle driver has been familiarized with, and is capable of implementing, transport vehicle immobilization, communications, and other security procedures.

(d) *Shipments by rail.* In addition to the provisions of paragraph (b), the physical protection system for any portion of a spent fuel shipment that is by rail shall provide that:

(1) A shipment car within a heavily populated area is accompanied by two armed escorts (who may be members of a local law enforcement agency), at least one of whom is stationed at a location on the train that will permit observation of the shipment car while in motion.

(2) A shipment car not within any heavily populated area is accompanied by at least one escort stationed at a location on the train that will permit observation of the shipment car while in motion.

(3) Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications, which shall be available on the train.

(e) *Shipments by sea.* In addition to the provisions of paragraph (b), the physical protection system for any portion of a spent fuel shipment that is

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PART 73 • PHYSICAL PROTECTION OF PLANTS AND MATERIALS

by sea shall provide that:

(1) A shipment vessel, while docked at a U.S. port within a heavily populated area, is protected by:

(i) Two armed escorts stationed on board the shipment vessel, or stationed on the dock at a location that will permit observation of the shipment vessel; or

(ii) A member of a local law enforcement agency, equipped with normal LLEA radio communications, who is stationed on board the shipment vessel, or on the dock at a location that will permit observation of the shipment vessel.

(2) A shipment vessel, while within U.S. territorial waters, or while docked at a U.S. port not within a heavily populated area, is accompanied by an escort, who may be an officer of the shipment vessel's crew, who will assure that the shipment is unloaded only as authorized by the licensee.

(3) Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications.

(f) Prior to the transport of spent fuel within or through a state a licensee subject to this section shall notify the governor or the governor's designee. The licensee shall comply with the following criteria in regard to a notification: (1) The notification must be in writing and sent to the office of each appropriate governor or the governor's designee. A notification delivered by mail must be postmarked at least 7 days before transport of a shipment within or through the state. A notification delivered by messenger must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the state. A list of the mailing addresses of governors and governors' designees is available upon request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) The notification must include the following information:

(i) The name, address, and telephone number of the shipper, carrier and receiver.

(ii) A description of the shipment as specified by the Department of Transportation in 49 CFR § 172.202 and § 172.203(d).

(iii) A listing of the routes to be used within the state.

(iv) A statement that the information described below in § 73.37(f)(3) is required by NRC regulations to be protected in accordance with the requirements of § 73.21.

(3) The licensee shall provide the following information on a separate enclosure to the written notification:

(i) The estimated date and time of departure from the point of origin of the shipment.

(ii) The estimated date and time of entry into the governor's state.

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until at least 10 days after the shipment has entered or originated within the state.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until 10 days after the last shipment in the series has entered or originated within the state and an estimate of the date on which the last shipment in the series will enter or originate within the state.

(4) A licensee shall notify by telephone or other means a responsible individual in the office of the governor or in the office of the governor's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished in accordance with § 73.37(f)(3), and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished.

(g) State officials, state employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in § 73.37(f)(3) shall protect that information against unauthorized disclosure as specified in § 73.21.

45 FR 37399

47 FR 600

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2/7/85
Attachment #4

TESTIMONY BY THE DIVISION OF EMERGENCY PREPAREDNESS

SB-20

We support Senate Bill 20.

The Nuclear Regulatory Commission, through 10 CFR Part 73 "Advance Notification of Governors Concerning Shipment of Irradiated Reactor Fuel", requires notification of spent fuel shipments. This provides that the Governor of any state through which the shipment passes must be notified if the shipment is in excess of 100 grams mass. The advance notice contains schedule information and it is required that such information be protected against unauthorized disclosure until the completion of the shipment. The Division of Emergency Preparedness is the Governor's Agent for notification. Also, through 10 CFR Part 71 "Advance Notification to States of Transportation of Certain Types of Nuclear Waste", the Nuclear Regulatory Commission requires states be notified of "large quantities" or "route controlled" radioactive waste. This includes advanced notification and does cover spent fuel shipments of less than 100 grams mass. The basic difference between CFR parts 71 and 73 is the security requirement for shipments over 100 grams.

It is not a requirement to notify the State of Kansas when fresh fuel (Type A package) is transported over Kansas highways to the Wolf Creek Generating Station. This was attested to by the NRC representative before the Kansas Special Legislative Committee on Transportation in early summer 1984. However, as requested, Kansas Gas and Electric Company does notify the Kansas Division of Emergency Preparedness of fuel shipments to the Wolf Creek Generating Station several days in advance of arrival. The approximate time of arrival and route through Kansas is transmitted. This information is given to State agencies that would have an interest in such information.

2/7/85
Attachment #5

February 6, 1985

Senate Federal and State Affairs Committee

As one of the agencies that may be required to react to an incident involving transported nuclear material, we appreciate the opportunity to indicate our support for Senate Bill #20.

It is our concern that required disclosure of transportation schedules of transported nuclear materials would expose those materials to lawless acts of so called terrorists and subsequently because of the dangers involved would not be in the best interest for the safety of the citizens of our State.

We, as a Police Department, are aware of the Legislature's concerns on the issue of the Public's right to know and we share those concerns. In the instance of the transportation of nuclear materials, public safety is of greater concern and we feel assured it will receive your utmost consideration.

Robert L. Weinkauff

ROBERT L. WEINKAUF
Chief of Police
Topeka Police Department

Lee F. Sipes

LT. LEE F. SIPES
Topeka Police Lobbyist

2/7/85
Attachment #6

MEMORANDUM

TO: Whom It May Concern
FROM: JOHN A. LAMB, Director, ABC Division
RE: History of ABC And Goals of the Director
DATE: January 14, 1985

In November, 1948, the people of Kansas voted to amend Section 10, Article 15, of the Constitution of the State of Kansas. As a result of this election, the state legislature enacted the Kansas Liquor Control Act which provides for the regulation of all phases of the control of manufacture, distribution, sale and traffic in alcoholic liquor and the manufacturing of beer except 3.2% and less.

The Office of the Director of Alcoholic Beverage Control was established to implement the provisions of this Act and to carry out the enforcement.

The Alcoholic Beverage Control Division issued the first distributor's license on June 6, 1949. On July 18, 1949, the first retail liquor licenses were issued.

The 1965 Legislative Session passed the Kansas Club Licensing Act, K.S.A. 41-2601 et seq., as amended, which placed private clubs under the jurisdiction of the Director of Alcoholic Beverage Control. The first licenses were issued on July 31, 1965.

The Division of Alcoholic Beverage Control of the Department of Revenue was created by legislation contained in Chapter 342, Session Laws of 1972, K.S.A. 41-201.

The Director of the Division of Alcoholic Beverage Control appointed by the Secretary of Revenue, administers the Division of Alcoholic Beverage Control. The activities of this office are outlined in Kansas Statutes Annotated.

The 1975 Legislative Session passed the Act concerning bingo. The Secretary of Revenue charged the Director of Alcoholic Beverage Control with the responsibility of policing all bingo activities conducted on licensed private club premises.

The 1978 Legislative Session passed two bills which placed additional responsibilities on the Director of Alcoholic Beverage Control. They are:

- A. Senate Bill 952 transferred the licensing and policing of sixty-eight (68) cereal malt beverage distributors from the Director of Taxation to the Director of Alcoholic Beverage Control. The Director of Alcoholic Beverage Control has continuously licensed and policed strong beer distributors in Kansas since 1949.

- B. Senate Bill 975 amended K.S.A. 41-201 and K.S.A. 41-2634 to remove the provisions that an organization or association determined to be exempt from the payment of federal income taxes under section 501(c)(7), (8) or (19) of the Internal Revenue Code shall qualify for a Class A license. Instead, organizations or associations would only qualify if they were determined by the Director of Alcoholic Beverage Control Division to be bona fide nonprofit social, fraternal or war veterans club pursuant to criteria established in rules and regulations.
- C. Senate Bill 975 also provided for multiple licensing of Class B clubs. The requirement is that each club operating under the provisions of multiple licensing must do fifty percent (50%) of their business in food.

The 1979 Legislature enacted two significant bills which affected the Director and the Division of Alcoholic Beverage Control. They are:

- A. Senate Bill 467 which authorizes Class A and Class B clubs to sell liquor by the drink to their members and bona fide guests. The bill extended the reciprocal privilege to Class B clubs, termed "restaurant clubs," having gross receipts greater than fifty percent (50%) from the sale of food. All private clubs were required to obtain a Federal Retailer's Tax Stamp in order to sell liquor in their clubs, and retail liquor stores who sold to private clubs, were required to purchase a Federal Wholesale Liquor Dealer's Basic Permit. The new law established a ten percent (10%) gross receipts tax on the sale of alcoholic liquor, to include spirits, wine and strong beer.
- B. House Bill 2020 replaced the "Open Wholesaling System" with an "Exclusive Franchise System." Passage of this bill increased the number of suppliers doing business in the state from 90 to 180.

The 1981 Legislature enacted two (2) bills which affected the Director and the Division of Alcoholic Beverage Control. They are:

- A. House Bill 2174 which prohibited the retail sale of all metal beverage containers designed so that a part of the container was detachable in opening the container. The bill provided the Director of Alcoholic Beverage Control with responsibility for designating which beverage containers were to be included in the Act. The bill provided a definition of "IN THIS STATE" that included all Federal Territory in the state. The act was effective January 1, 1984.

- B. House Bill 2582 authorized the licensing of private clubs on property in cities having a population of more than two hundred thousand (200,000). Further, it authorized the licensing of private clubs on property owned or operated by the county in counties having a population of 150,000. Additionally, the bill created a new category of temporary members for clubs located on airport property owned or operated by a municipal airport authority. Persons possessing an air traveler's ticket could receive temporary membership in such clubs for the date or dates that such a ticket was valid.

The 1982 Legislature passed 3 bills affecting the Alcoholic Beverage Control Division. They are:

- A. Senate Bill 865 provided that any sales of cereal malt beverages made in private clubs had to be for on-premise consumption only; and that cereal malt beverages could be sold in a private club at any time alcoholic liquor was allowed by law to be served on the premises.
- B. Senate Bill 866 was an act concerning strong beer and cereal malt beverages which related to agreements for distribution of beer and cereal malt beverages to wholesalers. It prohibited "Dual Franchises" for the distribution of strong beer and cereal malt beverage (3.2% beer).
- C. House Substitute for Senate Bill 888 was an act concerning alcoholic liquors. It related to taxation of gross receipts derived from sales of alcoholic liquor; it provided for enforcement procedures relating to the collection thereof; it related to distribution of revenue therefrom and it provided limitations on sales by certain manufacturers and suppliers of alcoholic liquors.

The 1983 Legislature enacted five (5) bills which affected the Alcoholic Beverage Control Division and the Department of Revenue. The bills and actions taken or being taken are:

- A. Senate Bill 43, an act concerning the Kansas Sunset Law continued the Department of Revenue and the Office of Secretary of Revenue in existence until July 1, 1991.
- B. House Bill 2130, an act concerning the liquor enforcement tax increased the enforcement tax upon the gross receipts from the sale of alcoholic liquor at retail from 4% to 8%. Retail liquor store sales in FY 1982 were \$219,352,528. Enforcement tax collected at the rate of 4% amounted to \$8,774,114.

- C. House Bill 2327 was an act which concerned the Kansas Open Records Act. This bill caused the Director to organize a team within the ABC Division to separate each licensee file into two parts to comply with the new law, one part for the public and the other part classified. This team commenced work on Monday, May 16, 1983. The Director's goal was to have all files converted by January 1, 1984, the effective date of the bill. This goal was achieved. The following actions were taken:
1. Space is provided for the visitor to review the record or records.
 2. Individuals, who will obtain records for visitors and be present while records are reviewed to insure nothing is removed, are identified, and
 3. A register to identify visitors, records reviewed, and time required for review was made.
- D. Substitute for House Bill 2382 concerned driver's licenses and non-driver's identification cards. The bill was designed to alleviate the problems of minors using false or copied identification documents when attempting to illegally purchase alcoholic liquor or cereal malt beverages.
- E. Substitute for House Bill 2551 amended the Kansas Liquor Control Act to provide for the following:
1. A "farm winery", licensed by the director, to manufacture, store and sell domestic table wine.
 2. The bill amended K.S.A. 41-311 to provide that a DUI conviction of the spouse of a retail liquor licensee would not be grounds for denial or revocation of a license.
 3. The bill eliminated the requirement for Kansas Identification Stamps to be placed on containers of brandy.

The 1984 Legislature enacted three (3) bills which affected the Alcoholic Beverage Control Division and the Department of Revenue. The bills and actions taken or being taken are:

- A. Senate Bill 401, an act concerning bingo, carried over from the 1983 Legislature created a new enforcement bureau within the Department of Revenue to oversee bingo in this state and placed greater restrictions on commercial parlors in an attempt to make non-profit games more competitive.

NOTE: Subsections (q) and (s) of section 3, Senate Bill 401 (chapter 366, 1984 Session Laws of Kansas) are not currently being enforced. These subsections, reproduced in their entirety below, were declared unconstitutional by the Shawnee County District Court. This matter is now under appeal to the Kansas Supreme Court, tentatively scheduled for oral argument in April. Subsection (r) was also challenged but declared constitutional by the District Judge.

(q) No premises shall be used for the management, operation or conduct of bingo games on more than three calendar days in any one week.

(r) No premises shall be subdivided to provide multiple premises where games of bingo are managed, operated or conducted, whether or not the multiple premises have different addresses.

(s) No game of bingo shall be managed, operated or conducted on leased premises if at any time during the immediately preceding 44 hours the premises, or any premises within 1,000 feet of them, have been used for the management, operation or conduct of a game of bingo.

- B. Senate Bill 494, an act concerning driver's licenses and nondriver's identification cards, requiring the use of different colored background with the photograph for all such cards that are issued to persons under 21 years of age.

NOTE: The state has adopted the color red for the different colored background, therefore all cards issued after July 1, 1984 to persons under 21 years of age will have a red background with the photograph.

- C. House Bill 2630, an act concerning the disposition of revenues derived from the gallonage tax on alcoholic liquor, amends K.S.A. 1983 Supp. 41-501 to restore language that was inadvertently deleted in 1983, and restricts the tax revenue going to the Community Alcoholism and Intoxication Program Fund to 10% of the revenue collected on alcohol and spirits only (excluding wine and beer).

GOALS

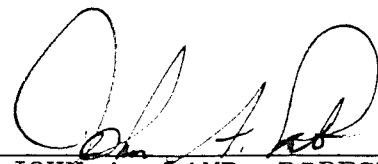
The goals of the Office of the Director of Alcoholic Beverage Control are:

1. To insure an orderly market for the distribution and sale of alcoholic beverages.
2. To conduct effective surveillance of the operations and individuals involved in all phases of the marketing of alcoholic beverages.
3. Assist the Department of Revenue in enforcing the collection of delinquent enforcement and 10% excise taxes.
4. To collect the gallonage tax.

PRIORITIES

As Director of the ABC Division, I feel, like my predecessors, that my priorities are:

1. To maintain an orderly market.
2. To protect the public welfare by investigating applicants for licenses.
3. To regulate the market.
4. To watch industry trade practices.



JOHN A. LAMB, DIRECTOR

JAL:cjk

MEMORANDUM

TO: Whom It May Concern

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Private Clubs

DATE: June 30, 1984

BACKGROUND

For 68 years, the Constitution of Kansas prohibited the manufacture and sale of alcoholic liquor. In 1948, the people of Kansas modified the constitutional prohibition to allow the sale of alcoholic liquor, but provided that "the open saloon shall be and is hereby forever prohibited". The following year the legislature enacted the Liquor Control Act. Not only does the Act prohibit the sale of alcoholic liquor by the drink at any place public or private (K.S.A. 41-803), but also makes it illegal to "consume alcoholic liquor" in "places to which the general public has access" (K.S.A. 41-719). The enforcement of these two provisions was woefully taxed between 1949 and 1965 by the rapid growth of so-called "private clubs" that existed as "schemes and devices" to dispense alcoholic liquor to the members of those clubs; which amounted to a subterfuge, if not actual sale of alcoholic liquor for consumption on the premises. The problem was not that the "clubs" in the ordinary sense of the word, organized, managed and conducted by and for the members, such as country clubs, veterans clubs, and fraternal organizations, were by their very nature legally private, but were commercially operated drinking establishments operating for the benefit of management.

Reacting to this enforcement problem the legislature in 1965, enacted the Private Club Act with the express purpose to define and regulate places where alcoholic liquor might lawfully be consumed in the state. One significant regulation was the requirement that no individual could become a member of a class "B" club until he or she, had paid a \$10.00 minimum annual membership fee and waited a period of at least 30 days (now 10 days) after application. [K.S.A. 41-2601(b)(3)]. The intent of such statutory requirement was "to insure that premises of a club operated for profit was not a place to which the general public had access, but was a legally private place".

The 1965 legislature provided one exception to the "\$10.00-ten day" requirement when it granted to certain class "B" clubs, located on the premises of hotels or motels, the privilege of issuing temporary membership to registered guests of the hotels and motels. The guests may not be residents of the county in which the club is located, and the membership is valid only for the period of time the non-county guests are bona fide registered guests of the hotel or motel. With respect to all other applicants for membership, these are class B clubs, i.e. the imposition of a \$10.00 annual membership fee and a ten-day waiting period.

The 1975 Legislative Session passed the Act concerning bingo. The Secretary of Revenue charged the Director of Alcoholic Beverage Control with the responsibility of policing all bingo activities conducted on licensed private club premises.

The 1978 Legislative Session passed one bill which placed additional responsibilities on the Director of Alcoholic Beverage Control as it pertained to private clubs. This bill, Senate Bill 975, amended K.S.A. 41-201 and K.S.A. 41-2634 to remove the provisions that an organization or association determined to be exempt from the payment of federal income taxes under section 501(c)(7), (8) or (19) of the Internal Revenue Code shall qualify for a class "A" license. Instead, organizations or associations would only qualify if they were determined by the Director of Alcoholic Beverage Control Division to be a bona fide nonprofit social, fraternal or war veterans clubs pursuant to criteria established in regulation by the Secretary of Revenue.

Senate Bill 975 also provided for multiple licensing of class "B" clubs. The requirement is that each club, operating under the provisions of multiple licensing, must do fifty percent (50%) of their business in food.

The 1979 Legislature enacted two significant bills which affected the Director and the Division of Alcoholic Beverage Control. They are:

- A. Senate Bill 467 which authorizes all Class "A" and Class "B" clubs to sell liquor by the drink to their members and bona fide guests. This bill totally eliminated liquor pools and liquor pool procedures which have previously been the mechanism that many private clubs used to dispense liquor. The bill permitted Class "A" clubs to continue to enter into reciprocal agreements between each other and extended that reciprocal privilege to Class "B" clubs, termed "restaurant clubs", having gross receipts greater than fifty percent (50%) from the sale of food. All private clubs were required to obtain a Federal Retailer's Tax Stamp in order to sell liquor in their clubs, and retail liquor stores who sold to private clubs, were required to purchase a Federal Wholesale Liquor Dealer's Basic Permit. The new law established a ten percent (10%) gross receipts tax on the sale of alcoholic liquor, to include spirits, wine and strong beer. This tax is applied to any drink containing alcoholic liquors and includes any portion of that amount attributable to the cost of any ingredient mixed with or added to the alcoholic liquors.
- B. House Bill 2020 replaced the "Open Wholesaling System" with an "Exclusive Franchise System". Further, the bill eliminated the prohibition of removing alcoholic liquors from bonded warehouses between sunset and sunrise. Finally, the bill authorized the consumption of alcoholic liquors at Forbes Field, Topeka, heretofore a prohibited practice.

The 1981 Legislature enacted three (3) bills which affected the Director and the Division of Alcoholic Beverage Control. They were:

- A. House Bill 2174 which prohibited the retail sale of all metal beverage containers designed so that a part of the container was detachable in opening the container. The bill provided the Director of Alcoholic Beverage Control with responsibility for designating which beverage containers were to be included in the Act. The bill provided a definition of "IN THIS STATE" that included all Federal Territory in the state. The act was effective January 1, 1982.

- B. House Bill 2582 authorized the licensing of private clubs on property which is owned or operated by a municipal airport authority in cities having a population of more than two hundred thousand (200,000). Further, it authorized the licensing of private clubs on property owned or operated by the county in counties having a population of 150,000. Additionally, the bill created a new category of temporary members for clubs located on airport authority. Persons possessing an air traveler's ticket could receive temporary membership in such clubs for the date or dates that such a ticket was valid.

The 1982 Legislature passed 2 bills affecting the Alcoholic Beverage Control Division. They were:

- A. Senate Bill 865 provided that any sales of cereal malt beverages made in private clubs had to be for on-premise consumption only; and that cereal malt beverages could be sold in a private club at any time alcoholic liquor was allowed by law to be served on the premises.

- B. House Substitute for Senate Bill 888 was an act concerning alcoholic liquors. It related to taxation of gross receipts derived from sales of alcoholic liquor; it provided for enforcement procedures relating to the collection thereof; it related to distribution of revenue therefrom and it provided limitations on sales by certain manufacturers and suppliers of alcoholic liquors.

The 1983 Legislature enacted five (5) bills which affected the Alcoholic Beverage Control Division and the Department of Revenue. The bills and actions taken or being taken are:

- A. Senate Bill 43, an act concerning the Kansas Sunset Law continued the Department of Revenue and the Office of Secretary of Revenue in existence until July 1, 1991.

- B. House Bill 2130, an act concerning the liquor enforcement tax upon the gross receipts from the sale of alcoholic liquor at retail from 4% to 8%. Retail liquor store sales in FY 1982 were \$219,352,528. Enforcement tax collected at the rate of 4% amounted to \$8,774,114.

- C. House Bill 2327 was an act which concerned the Kansas Open Records Act. This bill caused the Director to organize a team within the ABC Division to separate each licensee file into two parts to comply with the new law, one part for the public and the other part classified. This team commenced work on Monday, May 16, 1983. Each new license filed and each renewal file will be converted as they are processed. The Director's goal is to have all files converted by January 1, 1984, the effective date of the bill. The following actions are being taken:
1. Space is being provided for the visitor to review the record or records.
 2. Individuals who will obtain records for visitors and be present while records are reviewed to insure nothing is removed, are being identified, and
 3. A register to identify visitors, records reviewed, and time required for review, is being made.
- D. Substitute for House Bill 2382 concerned driver's licenses and nondriver's identification cards. The bill was designed to alleviate the problems of minors using false or copied identification documents when attempting to illegally purchase alcoholic liquor or cereal malt beverage.
- E. Substitute for House Bill 2551 amended the Kansas Liquor Control Act to provide for the following:
1. A "farm winery", licensed by the director, to manufacture, store and sell domestic table wine.
 2. The bill amended K.S.A. 41-311 to allow the spouse of a retail licensee to have a "DWI" conviction; and
 3. The bill eliminated the requirement for Kansas identification stamps to be placed on containers of brandy.

TODAY IN KANSAS

We have the following type clubs in Kansas today:

1. Class "A" clubs (K.S.A. 41-2601) means a premise owned or leased and operated by a corporation, partnership, business trust or association, for the exclusive use of the associates (hereinafter referred to as members), their families and invited and accompanied guests, and which is not operated for a profit other than such as would accrue to the entire membership. A corporation, partnership, trust, or association not operated for a profit, for the purpose of the definition of a class "A" club shall only include a corporation, partnership, business trust, or association which has been determined by the director to be a bona fide nonprofit social, fraternal or war veterans club,

2. Class "B" club means a premise operated for profit by a corporation, partnership or individual, known as the management, to which premises the management allows persons, known as members, to resort for the consumption of food or alcoholic beverages and for entertainment. As a prerequisite for attaining membership, the management must screen the applicants for good moral character. No membership may be granted within 10 days of the application therefor. Each membership must be renewable annually upon payment of the annual dues of at least \$10, except that:

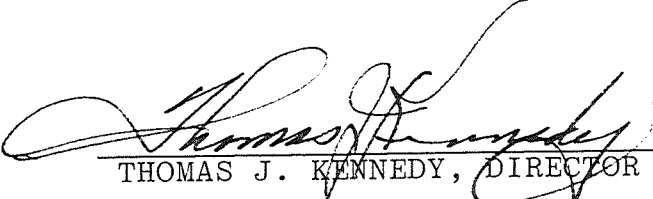
(A) Any class "B" club located on the premises of a hotel as defined in K.S.A. 36-501 may establish rules whereby a guest registered at the hotel, who is not a resident of the county in which the club is located, may file application for temporary membership in the club, which membership, if granted, shall only be valid for the period of time that the guest is a bona fide registered guest at the hotel, and such temporary membership shall not be subject to the waiting period or dues requirement of this section.

(B) Any class "B" club located on property which is owned or operated by a municipal airport authority and upon which consumption of alcoholic liquor is authorized by law may establish rules whereby an air traveler who is a holder of a current airline ticket may file application for temporary membership in the club for the day such air traveler's ticket is valid, and such temporary membership shall not be subject to the waiting period or dues requirement of this section.

In Kansas today we have a total of 1,283 private clubs; 402 are class "A" clubs and 881 are class "B" clubs. These clubs are located in all counties except four (4) in the state. They are:

Chase, Haskell, Hodgeman and Wallace

All other counties have at least one class "A" or class "B" club.


THOMAS J. KENNEDY, DIRECTOR

MEMORANDUM

TO: Whom It May Concern

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: History of CMB

DATE: June 30, 1984

Congressional relegalization of 3.2 percent beer and wine and the ratification of the Twenty-First Amendment to the United States Constitution, in 1933, marked the end of the thirteen years of national prohibition.

Beer was re-legalized by Congress under the Cullen-Harrison Act, which declared it a nonintoxicating beverage and provided for its sale on April 7, 1933, in all states where it was not prohibited by law.

Under this Act, the sale of beer became legal on April 7, 1933, in the District of Columbia and the 20 states where state laws did not prohibit its sale. During the next four years the remaining states changed their laws to permit its sale, with Alabama and Kansas, in 1937, as the last to join the legal sale ranks.

Meanwhile, Congress had adopted a resolution submitting the Twenty-first Amendment to the states for ratification. This required the approval by 36 states to accomplish the direct repeal of the Eighteenth (Prohibition) Amendment.

Michigan was the first state to ratify the Twenty-First Amendment. The final ratification was accomplished on November 7, 1933, when Kentucky, Ohio, Pennsylvania and Utah gave their approval.

The Twenty-First Amendment legalized spiritous, vinous and malt beverages, above 3.2 percent in all states where these beverages were not prohibited by state law, and today their sale is legal throughout the nation except in Mississippi, where legal content is limited to 4 percent.

The following states re-legalized beer on April 7, 1933, under the Cullen-Harrison Act:

California	Montana
Colorado	Nevada
Delaware	New Jersey
Illinois	New York
Indiana	Ohio
Kentucky	Oregon
Maryland	Rhode Island
Massachusetts	Vermont
Minnesota	Washington
Missouri	Wisconsin
	District of Columbia

Other state legalization dates for beer were:

Alabama	March 22, 1937	New Hampshire	May 2, 1933
Arizona	June 16, 1933	New Mexico	June 9, 1933
Arkansas	August 24, 1933	North Carolina	April 28, 1933
Connecticut	April 20, 1933	North Dakota	July 1, 1933
Florida	May 8, 1933	Oklahoma	July 12, 1933
Georgia	May 23, 1935	Pennsylvania	May 3, 1933
Idaho	June 21, 1933	South Carolina	April 14, 1933
Iowa	April 15, 1933	South Dakota	August 5, 1933
Kansas	May 1, 1937	Tennessee	May 1, 1933
Louisiana	April 15, 1933	Texas	September 15, 1933
Maine	June 30, 1933	Utah	January 1, 1934
Michigan	April 27, 1933	Virginia	September 3, 1933
Mississippi	February 26, 1934	West Virginia	April 12, 1933
Nebraska	May 8, 1933	Wyoming	May 19, 1933

State Wide Referenda Since Repeal. Kansas has had two Referendums since Repeal. They were:

<u>DATE</u>	<u>ISSUE</u>	<u>VOTE FOR</u>	<u>VOTE AGAINST</u>
11-6-34	To repeal state prohibition	347,644	436,688
11-3-48	To repeal state prohibition	422,294	358,310

LEGISLATION

The 1978 Legislature passed Senate Bill 952 which placed additional responsibilities on the Director of Alcoholic Beverage Control. Senate Bill 952 transferred the licensing and policing of sixty-eight (68) cereal malt beverage distributors from the Director of Taxation to the Director of Alcoholic Beverage Control. The Director of Alcoholic Beverage Control has continuously licensed and policed strong beer distributors in Kansas since 1949.

The 1981 Legislature enacted House Bill 2174 which affected the Director and the Division of Alcoholic Beverage Control. It prohibited the retail sale of all metal beverage containers that were designed so that a part of the container is detachable in opening the container. The Director of Alcoholic Beverage Control was charged with the responsibility for designating which liquor beverages were to be included in the act. The bill provided a definition of "IN THIS STATE" that includes all federal territory in the state. Violations of this act would be classified as a class C misdemeanor.

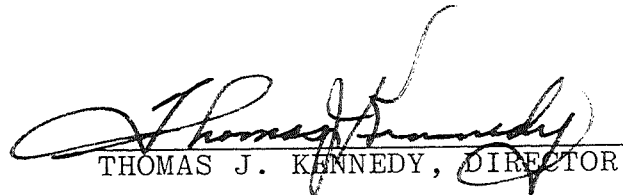
"Beverage Container" was defined as any sealed can containing beer, cereal malt beverage, mineral waters, soda water and similar soft drinks so designated by the director of alcoholic beverage control in liquid form and intended for human consumption.

This act applied to all beverage containers sold or offered for sale after January 1, 1982.

The 1982 Legislature enacted two (2) CMB bills which affected the Director and the Division of Alcoholic Beverage Control. They were:

1. Senate Bill 865 which concerns sale of cereal malt beverages in private clubs. The bill provides that any sales of cereal malt beverage made in private clubs must be for on premise consumption only; and that cereal malt beverages may be sold in a private club at any time when alcoholic liquor is allowed by law to be served on the premises.

2. Senate Bill 866 concerns alcoholic liquors (strong beer) and beverages (cereal malt beverages) which relates to agreements for distribution of beer and cereal malt beverages to wholesalers and prohibits "dual franchises" for strong beer and cereal malt beverage (3.2%) alcohol by weight.


THOMAS J. KENNEDY, DIRECTOR

MEMORANDUM

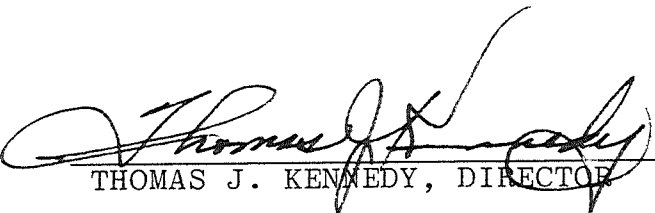
TO: Whom It May Concern
FROM: THOMAS J. KENNEDY, Director, ABC Division
RE: Per Capita Consumption FY 84
DATE: June 30, 1984

		<u>GALLONS</u>
Alcohol & Spirits	\$7,494,665.49 divided by \$2.50 =	2,997,866
Fortified Wine	120,055.71 divided by .75 =	160,074
Light Wine	539,725.37 divided by .30 =	1,799,085
Strong Beer	4,018,364.23 divided by .18 =	22,324,246
CMB	5,125,340.11 divided by .18 =	<u>28,474,112</u>
	TOTAL	<u>55,755,383</u>

	<u>GALLONS</u>	<u>DIVIDED BY</u>	<u>POPULATION</u>	=	<u>PER CAPITA CONSUMPTION</u>
Alcohol & Spirits	2,997,866	divided by	2,408,781	=	1.245 Gallon
Fortified Wine	160,074	divided by	2,408,781	=	.066 Gallon
Light Wine	1,799,085	divided by	2,408,781	=	.747 Gallon
Strong Beer	22,324,246	divided by	2,408,781	=	9.268 Gallon
CMB	28,474,112	divided by	2,408,781	=	<u>11.821</u> Gallon
		TOTAL			<u>23,147</u> Gallon

State population in 84: 2,408,781

55,755,383 gallons divided by 2,408,781 = 23.147 per capital consumption


THOMAS J. KENNEDY, DIRECTOR

TJK:cjk

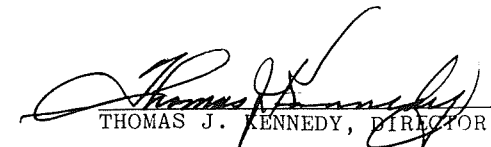
MEMORANDUM

TO: WHOM IT MAY CONCERN
 FROM: THOMAS J. KENNEDY, Director
 ABC Division

RE: Revenue Collected by
 the ABC Division

DATE: June 30, 1983

	<u>July - June</u> <u>F.Y. 77</u>	<u>July - June</u> <u>F.Y. 78</u>	<u>July - June</u> <u>F.Y. 79</u>	<u>July - June</u> <u>F.Y. 80</u>	<u>July - June</u> <u>F.Y. 81</u>	<u>July - June</u> <u>F.Y. 82</u>	<u>July - June</u> <u>F.Y. 83</u>
Tax Revenue (Net Refunds)							
Alcoholic & Spirits	\$4,469,702.52	\$ 7,411,688.85	\$ 7,747,238.86	\$ 7,742,442.57	\$ 7,502,644.49	\$ 7,906,246.70	\$ 7,556,432.38
Fortified Wine	126,469.87	169,043.91	152,568.23	133,323.05	127,928.73	141,195.20	128,136.76
Light Wine	239,749.14	391,209.43	420,565.89	461,499.73	454,406.47	507,978.33	521,623.43
Strong Beer Tax	2,729,324.72	3,263,464.76	3,639,834.07	3,949,418.41	4,254,191.87	4,281,979.75	4,082,273.43
C.M.B. Tax	-	-	5,110,223.37	4,966,378.72	5,127,877.55	5,078,085.68	4,979,165.83
Inventory	-	864,135.67	-	-	-	-	-
Total Tax Revenue	\$7,565,246.25	\$12,099,542.62	\$17,070,430.42	\$17,253,062.48	\$17,467,049.11	\$17,915,485.66	\$17,267,631.83
Other Revenue (Net Refunds)							
License Fees	\$ 742,042.99	\$ 805,349.70	\$ 879,034.06	\$ 940,033.01	\$ 1,004,855.50	\$ 1,040,958.83	\$ 1,090,002.45
Registration Fees	41,180.00	41,095.89	44,670.00	43,154.70	44,695.10	45,556.00	44,878.00
Miscellaneous	789.43	623.00	777.45	714.87	502.75	401.28	474.58
Price Posting	31,574.00	29,873.00	29,745.00	50,778.00	55,968.00	55,050.00	59,397.00
Permit Fees -							
Agent	7,830.00	8,430.00	8,350.00	9,710.00	8,980.00	9,140.00	9,580.00
Non-Beverage	250.00	208.00	228.00	196.00	220.00	222.00	217.00
C.M.B. License Fees	-	-	20,500.00	19,138.34	19,096.34	19,936.73	19,300.00
Fines	-	-	-	27,300.00	50,100.00	81,950.00	81,415.00
Total Other Revenue	\$ 823,666.42	\$ 885,579.59	\$ 983,304.51	\$ 1,091,024.92	\$ 1,184,417.69	\$ 1,253,214.84	\$ 1,305,264.03
TOTAL ALL REVENUE	<u>\$8,388,912.67</u>	<u>\$12,985,122.21</u>	<u>\$18,053,734.93</u>	<u>\$18,344,087.40</u>	<u>\$18,651,466.80</u>	<u>\$19,168,700.50</u>	<u>\$18,572,895.86</u>


 THOMAS J. KENNEDY, DIRECTOR

MEMORANDUM

TO: Whom It May Concern

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Per Capita Apparent Consumption

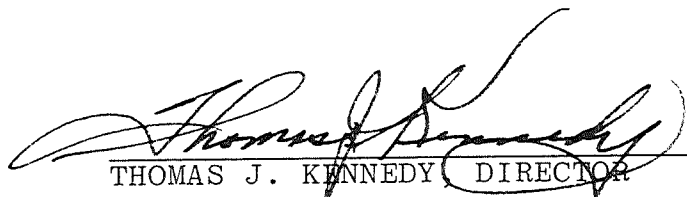
DATE: June 30, 1984

Per capita apparent consumption of alcoholic beverages by beverage for Kansas and surrounding states in 1982 were:

<u>STATE</u>	<u>DISTILLED SPIRITS</u>		<u>WINE</u>		<u>BEER</u>	
	<u>WINE GALLONS</u>		<u>WINE GALLONS</u>		<u>WINE GALLONS</u>	
	<u>PER CAPITA</u>	<u>RANK</u>	<u>PER CAPITA</u>	<u>RANK</u>	<u>PER CAPITA</u>	<u>RANK</u>
Kansas	1.29	4	0.81	5	21.34	4
Colorado	2.25	1	2.80	1	27.34	1
Missouri	1.26	5	1.32	2	24.39	3
Oklahoma	1.57	3	0.99	4	20.47	5
Nebraska	1.58	2	1.25	3	26.18	2

Per capita apparent consumption of alcohol beverages by beverage and state in 1982. See Enclosure #1, extracted from Distilled Spirits Council of the United States, Inc. book, subject: Public Revenues from alcoholic beverages dated 1982/1983.

State Alcoholic beverage and distilled spirits tax revenue as percentages of total state tax revenues, 1982. See Enclosure #2, extracted from Distilled Spirits Council of the United States, Inc. book, subject: Public Revenues from alcoholic beverages dated 1982/1983.


THOMAS J. KENNEDY, DIRECTOR

TJK:cjk

TABLE 20

ENCLOSURE #1

**Per Capita Apparent Consumption
of Alcohol Beverages by Beverage and State, 1982**

State	DISTILLED SPIRITS		WINE		BEER	
	Wine Gallons Per Capita	Rank	Wine Gallons Per Capita	Rank	Wine Gallons Per Capita	Rank
Alabama	1.37	42	1.06	41	17.27	50
Alaska	3.11	4	3.22	7	28.66	9
Arizona	1.97	22	2.43	17	29.88	7
Arkansas	1.19	49	0.75	49	17.83	49
California	2.22	13	4.47	3	24.84	21
Colorado	2.25	11	2.80	15	27.34	14
Connecticut	2.41	9	2.90	13	19.26	47
Delaware	2.59	5	2.10	20	27.38	13
District of Columbia	5.53	1	6.76	1	27.39	12
Florida	2.52	6	2.55	16	28.45	10
Georgia	1.95	24	1.29	36	20.26	42
Hawaii	2.16	16	2.88	14	31.21	5
Idaho	1.39	41	1.75	25	23.99	28
Illinois	2.04	21	2.19	19	24.81	22
Indiana	1.44	39	1.12	39	22.45	35
Iowa	1.25	48	0.79	47	24.35	27
Kansas	1.29	45	0.81	46	21.34	40
Kentucky	1.43	40	0.71	50	19.76	45
Louisiana	1.84	29	1.75	25	25.16	20
Maine	1.97	22	1.87	23	23.15	33
Maryland	2.46	7	2.20	18	24.79	23
Massachusetts	2.45	8	3.17	10	25.95	18
Michigan	1.88	28	1.71	27	23.55	30
Minnesota	2.12	18	1.67	29	23.87	29
Mississippi	1.50	38	0.64	51	19.86	43
Missouri	1.26	46	1.32	34	24.39	26
Montana	1.92	25	1.94	22	31.34	4
Nebraska	1.58	34	1.25	37	26.18	16
Nevada	4.89	2	4.79	2	35.47	1
New Hampshire	4.56	3	3.62	4	33.72	3
New Jersey	2.25	11	3.29	6	22.00	37
New Mexico	1.58	34	2.01	21	27.99	11
New York	2.16	16	3.02	12	22.85	34
North Carolina	1.64	33	1.32	34	18.98	48
North Dakota	2.12	18	1.06	41	26.43	15
Ohio	1.26	46	1.36	33	24.56	24
Oklahoma	1.57	36	0.99	43	20.47	41
Oregon	1.68	32	3.20	8	23.21	32
Pennsylvania	1.36	43	1.44	31	25.92	19
Rhode Island	2.08	20	3.33	5	24.56	24
South Carolina	1.89	27	1.22	38	21.39	39
South Dakota	1.82	30	1.07	40	22.00	37
Tennessee	1.35	44	0.85	44	19.86	43
Texas	1.57	36	1.56	30	31.13	6
Utah	0.92	51	0.79	47	15.47	51
Vermont	2.40	10	3.10	11	26.16	17
Virginia	1.71	31	1.68	28	22.19	36
Washington	1.90	26	3.20	8	23.24	31
West Virginia	1.05	50	0.85	44	19.31	46
Wisconsin	2.20	14	1.86	24	34.03	2
Wyoming	2.19	15	1.38	32	29.63	8
License States	2.02	—	2.44	—	24.98	—
Control States	1.57	—	1.60	—	23.10	—
GRAND TOTAL	1.89	—	2.20	—	24.43	—

NOTE: In all instances, gallons per capita figures are computed from consumption figures for calendar 1982 and from residential population figures, estimated as of July 1, 1982, U.S. Bureau of Census.

TABLE 21

State Alcohol Beverage and Distilled Spirits Revenues as Percentages of Total State Tax Revenues, 1982^a

License States	PERCENTAGE OF TOTAL REVENUES FROM		Control States	PERCENTAGE OF TOTAL REVENUES FROM	
	Alcohol Beverages	Distilled Spirits		Alcohol Beverages	Distilled Spirits
Alaska	0.4	0.2	Alabama	6.1	3.2
Arizona	2.9	1.3	Idaho	4.5	2.0
Arkansas	2.5	1.2	Iowa	4.2	2.5
California	2.1	1.0	Maine	6.0	3.5
Colorado	3.8	1.8	Michigan	4.0	2.3
Connecticut	3.4	1.8	Mississippi	5.5	2.6
Delaware	0.9	0.7	Montana	4.2	2.6
District of Columbia	1.8	1.1	New Hampshire	11.5	7.5
Florida	8.9	3.5	North Carolina	4.7	2.3
Georgia	4.0	1.5	Ohio	4.6	2.5
Hawaii	0.9	0.3	Oregon	4.9	4.1
Illinois	2.6	1.2	Pennsylvania	3.8	2.1
Indiana	2.9	1.2	Utah	3.8	2.3
Kansas	2.7	1.1	Vermont	6.2	3.9
Kentucky	2.0	0.9	Virginia	4.4	2.4
Louisiana	3.1	1.1	Washington	5.6	3.9
Maryland	2.6	1.2	West Virginia	2.8	1.3
Massachusetts	2.7	1.5	Wyoming	1.2	0.7
Minnesota	3.1	1.7	Control States	4.5	2.6
Missouri	2.4	1.1	ALL STATES	3.4	1.7
Nebraska	2.9	1.2			
Nevada	5.9	3.2			
New Jersey	2.5	1.4			
New Mexico	2.4	0.8			
New York	2.0	1.3			
North Dakota	2.4	1.1			
Oklahoma	1.7	0.8			
Rhode Island	3.4	1.5			
South Carolina	6.1	2.5			
South Dakota	4.6	2.2			
Tennessee	4.1	2.3			
Texas	4.5	2.1			
Wisconsin	2.4	1.3			
License States	3.0	1.4			

^aExcluding local revenues. Alcohol beverage and distilled spirits revenues include net profits from state store operations in control states.

MEMORANDUM

TO: Whom It May Concern

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Gallonage Tax Collection and Gallons of Alcoholic
Liquors and CMB Sold in Kansas

DATE: June 30, 1984

<u>ITEM</u>	<u>TAX</u>	<u>FY 1983</u>		<u>FY 1984</u>	
		<u>GALLONS</u>	<u>GALLONAGE TAX</u>	<u>GALLONS</u>	<u>GALLONAGE TAX</u>
Alcohol & Spirits	\$2.50	3,022,573	\$7,556,432.38	2,997,866	\$7,494,665.49
Fortified Wine	.75	170,849	128,136.76	160,074	120,055.71
Light Wine	.30	1,738,745	521,623.43	1,799,085	539,725.37
Strong Beer	.18	22,679,296	4,082,273.43	22,324,246	4,018,364.23
CMB (3.2)	.18	<u>27,662,032</u>	<u>4,979,165.83</u>	<u>28,474,112</u>	<u>5,125,340.11</u>
TOTALS		<u>55,273,495</u>	<u>\$17,267,631.83</u>	<u>55,755,383</u>	<u>\$17,298,150.91</u>

DEFINITIONS:

1. Alcoholic Liquors: Means alcohol, spirits, wine, beer and every liquor or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than three and two-tenths percent (3.2%) alcohol by weight.
2. Alcohol and Spirits: Means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution and includes brandy, rum, whisky, gin or other spiritous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

Alcohol and Spirits consists of two categories:

Category I - consists of Bourbon Whiskey; Blended Whiskey; Bonded Whiskey; Corn Whiskey; Rye Whiskey; Scotch Whiskey; Canadian Whiskey; Irish Whiskey; Vodka; Flavored Gin; Vodka and Whiskey; Gin; Rum; Tequila; American Brandy; Imported Brandy; Cognac Alcohol; Prepared Cocktails.

Category II - consists of American Cordials, specialties and liqueurs; Imported Cordials, specialties and liqueurs.

3. Wine: Means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries, or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. Two types of wines for taxing purposes are:

Fortified Wine: Wines containing more than fourteen percent (14%) alcohol by volume.

Light Wine: Wines containing fourteen percent (14%) or less of alcohol by volume.

Wine consists of American Vermouth, Imported Vermouth, American Wine; Imported Wine; American Sparkling Wine; Imported Sparkling Wine.

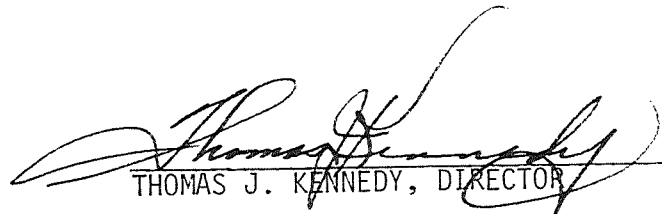
4. Beer: Beer containing more than 3.2 percent of alcohol by weight.
5. Cereal Malt Beverage: Means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt and/or malt substitute but shall not include any such liquor which contains more than three and two-tenths percent (3.2%) of alcohol by weight.
6. Gallon: The word "gallon" means "wine gallon".
7. Gallonage Tax: For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquors in this state or a federal area at the following rates:

	<u>Rate Per Gallon</u>
Alcohol and Spirits	\$2.50
Fortified Wine (over 14% alcohol by volume)	.75
Light Wine (14% or less alcohol by volume)	.30
Strong Beer (more than 3.2% of alcohol by wt.)	.18
Cereal Malt Beverage (3.2% beer)	.18

Said tax shall be paid only once, and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives such alcoholic liquors; and shall be collected and paid to the director as provided in this act. If such alcoholic liquor is manufactured and sold in this state or a federal area, such tax shall be paid by the manufacturer. If such alcoholic liquor is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, such tax shall be paid by said distributor. (KSA 41-501 (2) (a)(b).)

The tax on alcoholic liquor, other than beer as levied by the act and payable by a distributor shall be paid by the distributor on or before the fifteenth day of the calendar month next succeeding the month in which the distributor acquires possession of said alcoholic liquors upon which the tax has not been paid.

The tax on beer containing more than three and two-tenths percent (3.2%) of alcohol by weight and cereal malt beverage as levied by the act shall be payable by each beer manufacturer or supplier on or before the tenth day of the calendar month next succeeding the month in which the beer manufacturer or supplier ships said beer from his warehouse or point of shipment.



THOMAS J. KENNEDY, DIRECTOR

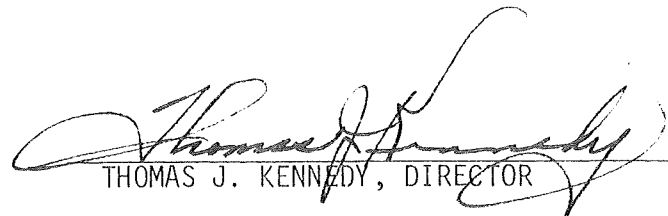
MEMORANDUM

TO: Whom It May Concern
FROM: THOMAS J. KENNEDY, Director,
ABC Division

RE: Gallons of CMB and Strong
Beer Sold
DATE: June 30, 1984

FIGURES EXPRESSED IN GALLONS

	<u>(3.2% Cereal Malt Beverages)</u> <u>Total Gallons Sold</u>	<u>(Strong Beer-Over 3.2%</u> <u>Alcohol by Weight)</u> <u>Total Gallons Sold</u>	<u>(CMB and Strong Beer)</u> <u>Total Gallons Sold</u>
FY 78 (July 1, 1977 thru June 30, 1978)	27,920,133	18,512,679	46,432,812
FY 79 (July 1, 1978 thru June 30, 1979)	28,713,935	20,212,101	48,926,036
FY 80 (July 1, 1979 thru June 30, 1980)	27,879,868	22,300,457	50,180,325
FY 81 (July 1, 1980 thru June 30, 1981)	28,703,192	23,668,166	52,371,358
FY 82 (July 1, 1981 thru June 30, 1982)	28,211,587	23,788,776	52,000,363
FY 83 (July 1, 1982 thru June 30, 1983)	27,662,032	22,679,296	50,341,328
FY 84 (July 1, 1983 thru June 30, 1984)	28,474,112	22,324,246	50,798,358


THOMAS J. KENNEDY, DIRECTOR

MEMORANDUM

TO: Whom It May Concern

FORM: THOMAS J. KENNEDY, Director, ABC Division

RE: Counties in Kansas with No Retail Liquor Stores and
Counties in Kansas with No Private Clubs

DATE: June 30, 1984

The following six (6) counties in the State of
Kansas do not have retail liquor stores:

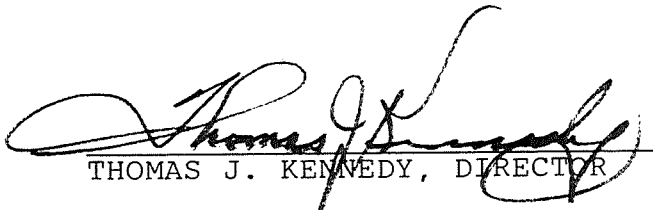
Commanche
Franklin
Haskell
Kiowa
Linn
Stanton

See Enclosure #1 & #2

The following four (4) counties in the State of
Kansas do not have private clubs:

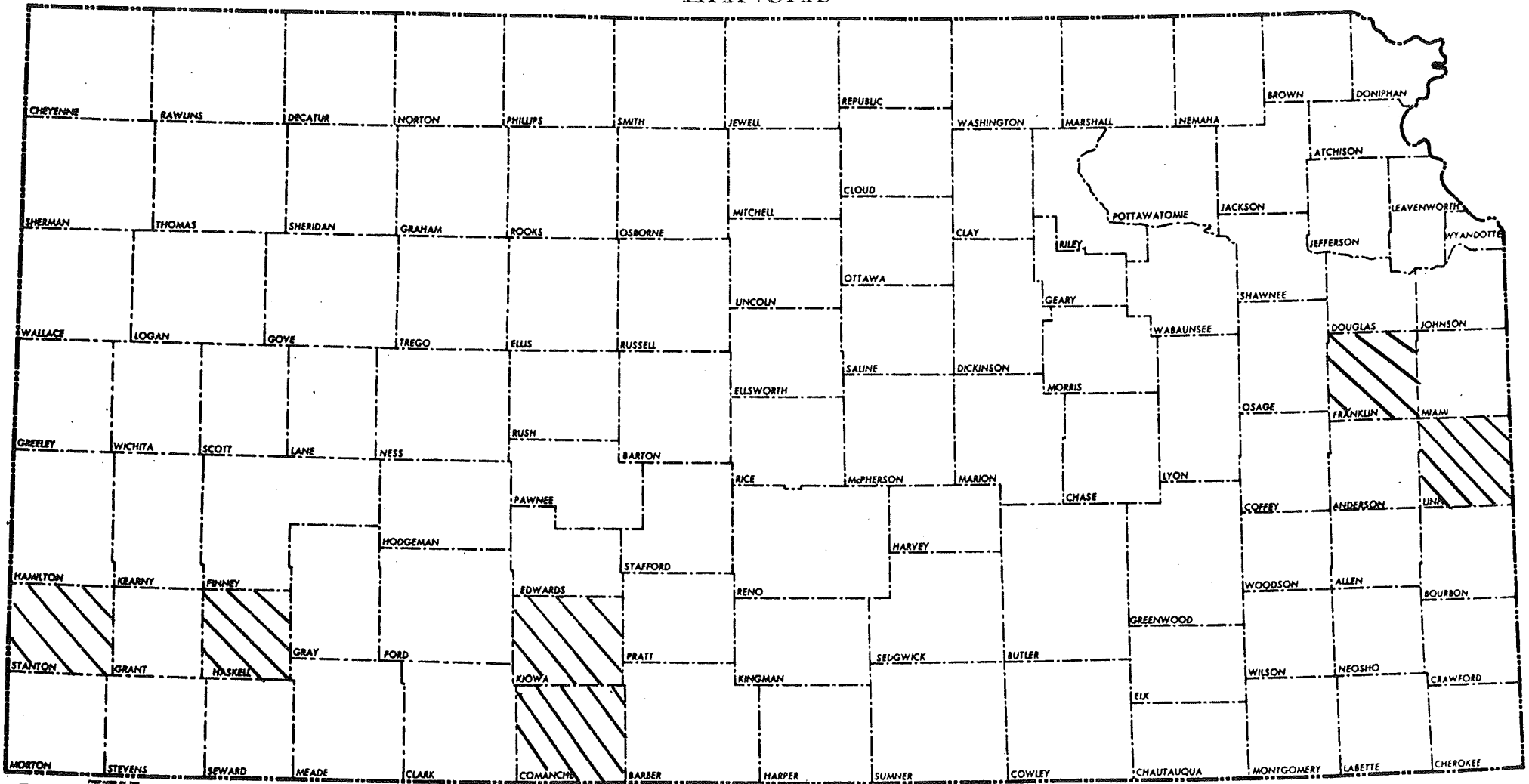
Chase
Haskell
Hodgeman
Wallace

See Enclosure #3 & #4


THOMAS J. KENNEDY, DIRECTOR

TJK:cjk

COUNTIES WITH NO RETAIL LIQUOR STORES
 AS OF JUNE 30, 1984
 KANSAS



STATE HIGHWAY COMMISSION OF KANSAS
 DEPARTMENT OF PLANNING AND DEVELOPMENT

RETAIL LIQUOR STORES OPERATING
AS OF JUNE 30, 1984
BY COUNTY

<u>COUNTY</u>	<u>NO.</u>	<u>COUNTY</u>	<u>NO.</u>	<u>COUNTY</u>	<u>NO.</u>
Allen	7	Greeley	1	Osborne	3
Anderson	5	Greenwood	6	Ottawa	3
Atchison	7	Hamilton	1	Pawnee	5
Barber	5	Harper	4	Phillips	6
Barton	22	Harvey	11	Pottawatomie	11
Bourbon	6	Haskell	0	Pratt	5
Brown	5	Hodgeman	1	Rawlins	3
Butler	14	Jackson	5	Reno	29
Chase	2	Jefferson	5	Republic	4
Chautauqua	3	Jewell	1	Rice	4
Cherokee	9	Johnson	100	Riley	21
Cheyenne	1	Kearny	1	Rooks	7
Clark	2	Kingman	4	Rush	6
Clay	5	Kiowa	0	Russell	10
Cloud	5	Labette	10	Saline	25
Coffey	3	Lane	2	Scott	4
Comanche	0	Leavenworth	19	Sedgwick	166
Cowley	10	Lincoln	4	Seward	12
Crawford	14	Linn	0	Shawnee	74
Decatur	4	Logan	3	Sheridan	3
Dickinson	9	Lyon	14	Sherman	4
Doniphan	1	McPherson	8	Smith	1
Douglas	25	Marion	5	Stafford	2
Edwrds	3	Marshall	9	Stanton	0
Elk	3	Meade	2	Stevens	2
Ellis	20	Miami	10	Sumner	9
Ellsworth	6	Mitchell	9	Thomas	8
Finney	15	Montgomery	21	Trego	2
Ford	14	Morris	3	Wabaunsee	4
Franklin	0	Morton	2	Wallace	1
Geary	21	Nemaha	10	Washington	4
Gove	3	Neosho	9	Wichita	2
Graham	2	Ness	2	Wilson	7
Grant	3	Norton	4	Woodson	3
Gray	1	Osage	6	Wyandotte	87

TOTAL 1,084

COUNT OF PRIVATE CLUBS BY COUNTIES
(THROUGH JUNE 30, 1984)

Number of Clubs <u>Operating</u>			Number of Clubs <u>Operating</u>		
<u>COUNTY</u>	<u>"A"</u>	<u>CLASS</u> <u>"B"</u>	<u>COUNTY</u>	<u>"A"</u>	<u>CLASS</u> <u>"B"</u>
Allen	4	4	Linn	1	2
Anderson	2	3	Logan	3	1
Atchison	4	4	Lyon	5	13
Barber	0	4	McPherson	6	8
Barton	13	11	Marion	4	1
Bourbon	3	4	Marshall	4	5
Brown	3	2	Meade	0	2
Butler	8	5	Miami	7	3
Chase	0	0	Mitchell	7	2
Chataqua	0	2	Montgomery	10	14
Cherokee	6	4	Morris	1	1
Cheyenne	2	0	Morton	1	0
Clark	0	2	Nemaha	5	3
Clay	4	0	Neosho	8	8
Cloud	6	2	Ness	2	2
Coffey	3	1	Norton	3	2
Comanche	0	1	Osage	1	3
Cowley	9	12	Osborne	1	0
Crawford	6	14	Ottawa	1	1
Decatur	1	1	Pawnee	4	1
Dickinson	6	3	Phillips	2	4
Doniphan	2	1	Pottawatomie	5	4
Douglas	7	27	Pratt	5	4
Edwards	2	1	Rawlins	2	0
Elk	0	1	Reno	11	19
Ellis	7	17	Republis	3	1
Ellsworth	4	3	Rice	6	2
Finney	8	12	Riley	6	18
Ford	5	16	Rooks	3	2
Franklin	5	6	Rush	1	3
Geary	7	22	Russell	4	6
Gove	1	0	Saline	8	17
Graham	0	2	Scott	1	1
Grant	0	4	Sedgwick	28	191
Gray	1	0	Seward	4	5
Greeley	1	0	Shawnee	20	66
Greenwood	2	2	Sheridan	1	1
Hamilton	1	0	Sherman	4	3
Harper	0	2	Smith	2	4
Harvey	7	3	Stafford	2	1
Haskell	0	0	Stanton	0	1
Hodgeman	0	0	Stevens	0	1
Jackson	3	3	Sumner	3	8
Jefferson	3	4	Thomas	3	3
Jewell	0	2	Trego	1	2
Johnson	23	92	Wabaunsee	0	2
Kearny	0	1	Wallace	0	0
Kingman	1	0	Washington	3	5
Kiowa	0	1	Wichita	1	0
Labette	5	7	Wilson	4	6
Lane	1	1	Woodson	2	1
Leavenworth	8	28	Wyandotte	8	90
Lincoln	1	1			
			TOTALS	<u>402</u>	<u>881</u>

Per Capita Consumption (Gallons)

1980

Alcohol & Spirits = 1.299
Fortified Wine = .075
Light Wine = .640
Strong Beer = 9.209
CMB = 11.580

1981

Alcohol & Spirits = 1.270
Fortified Wine = .072
Light Wine = .641
Strong Beer = 9.999
CMB = 12.053

1982

Alcohol & Spirits = 1.327
Fortified Wine = .079
Light Wine = .711
Strong Beer = 9.984
CMB = 11.841

1983

Alcohol & Spirits = 1.252
Fortified Wine = .071
Light Wine = .720
Strong Beer = 9.394
CMB = 11.457

1984

Alcohol & Spirits = 1.245
Fortified Wine = .066
Light Wine = .747
Strong Beer = 9.268
CMB = 11.821

MEMORANDUM

TO: Whom It May Concern

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Definition of Gross Receipts for Purpose of Reciprocity

DATE: May 5, 1983

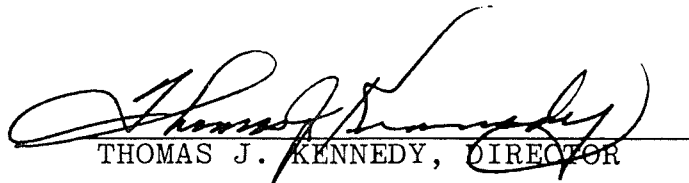
What constitute "Gross Receipts" for purposes of reciprocity in class "B" private clubs?

1. "Reciprocity" as defined by K.S.A. 1978 Supp. 41-2637 means: "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 an 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 persons."
2. "Restaurant" as defined by K.S.A. 1978 Supp. 41-2601 means a licensed food service establishment as defined by K.S.A. 1978 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.
3. "Food" means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.
4. "Food Income" means the gross receipts from the sale of food on the licensed club premises only. Receipts from the sale of food in an adjacent or public dining area may not be included. Receipts from the sale of food in the licensed club which are generated during hours that the club is open to the public pursuant to Letter of Approval from the director, may be included.

5. "Alcoholic Liquor" as defined by K.S.A. 41-102(2) means: Alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than three and two-tenths percent (3.2%) alcohol by weight.
- "Cereal Malt Beverage" defined by K.S.A. 41-2701(a) means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight.
6. "Membership Dues" as provided for in K.S.A. 41-2601(b)(3) states: Each membership in a class B club must be renewable annually upon payment of the annual dues of at least ten dollars (\$10.00) except temporary members as provided for in the statute. No membership in a class "B" club may be granted within ten (10) days of the application therefor.
7. "Gross Receipts" includes sales of any type made on the licensed premises of a class "B" private club. These sales include:
- a. Food
 - b. Alcoholic liquors
 - c. Cereal Malt Beverages
 - d. Membership Fees
 - e. Cover Charges
 - f. Vending Machine Concesssions
 - g. Video Games
 - h. Any other sales made on the licensed premises

In Summary:

- a. Gross Receipts shall include receipts from sales of any type made on the licensed premises of a class "B" club.
- b. Food Receipts constitute sales from food but does not include alcoholic liquor or cereal malt beverage.

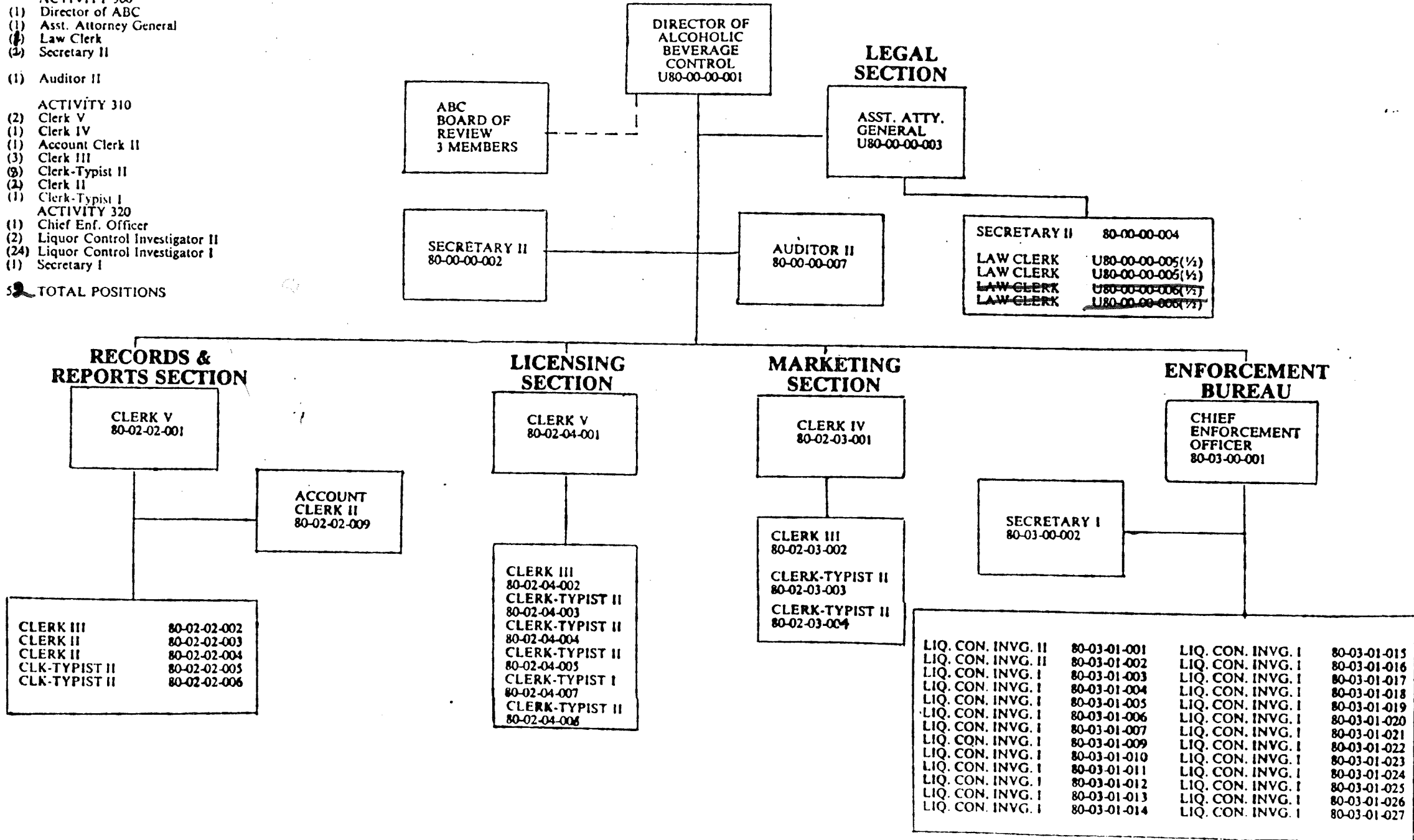

THOMAS J. KENNEDY, DIRECTOR

**ORGANIZATION CHART
KANSAS DEPARTMENT OF REVENUE
Division of Alcoholic Beverage Control
FISCAL YEAR 1983**

POSITION SUMMARY

- ACTIVITY 300
 (1) Director of ABC
 (1) Asst. Attorney General
 (1) Law Clerk
 (2) Secretary II
- (1) Auditor II
- ACTIVITY 310
 (2) Clerk V
 (1) Clerk IV
 (1) Account Clerk II
 (3) Clerk III
 (9) Clerk-Typist II
 (2) Clerk II
 (1) Clerk-Typist I
- ACTIVITY 320
 (1) Chief Enf. Officer
 (2) Liquor Control Investigator II
 (24) Liquor Control Investigator I
 (1) Secretary I

52 TOTAL POSITIONS





Kansas

Attachment # 7

DEPARTMENT OF REVENUE
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Topeka, Kansas 66625

(913) 296-3946

TO: Honorable Edward Reilly, Chairperson
Senate Federal and State Affairs Committee

FROM: JOHN A. LAMB, Director, ABC Division

RE: Agency Legislative Proposals

DATE: February 7, 1985

I have attached five (5) legislative proposals for committee review and comment. Your serious consideration of these matters will be appreciated.

A handwritten signature in dark ink, appearing to read "John A. Lamb", is written over a horizontal line.

JOHN A. LAMB, DIRECTOR

JAL:cjk
Attachments

Attachment 7

PROPOSAL: Change in Law--Gallonage Tax

A proposal to allow private citizens to pay gallonage tax on alcoholic liquor purchased in foreign countries and brought back to Kansas.

K.S.A. 41-501(b)(2)

The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquors. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor is manufactured and sold in this state or federal area, the tax shall be paid by the manufacturer or farm winery producing it. If the alcoholic liquor is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor. If the alcoholic liquor has been purchased by a private citizen outside the borders of the United States and is brought into this state by said private citizen for his or her own personal use and not for sale or resale, the tax shall be paid by said private citizen.

PROPOSAL: Stiffer Penalties for Minors who Purchase or
Consume Alcoholic Liquor

A proposal to increase the penalties for minors who possess or purchase alcoholic liquor. Following are several suggestions for ways that this could be done:

K.S.A. 41-715. Unlawful acts by minors in connection with purchases or possession of alcoholic liquor; procurement of alcoholic liquor for incapacitated persons unlawful; penalties.

(a) No minor shall represent that he is of age for the purpose of asking for, purchasing or receiving alcoholic liquor from any person except in cases authorized by law. No minor shall attempt to purchase or purchase alcoholic liquor from any person. No minor shall possess alcoholic liquor. Any person violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment of not more than ninety (90) days, or both such fine and imprisonment. (b) No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of ~~such~~ alcoholic liquor. Any person violating any of the provisions of this ~~section~~ subsection shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not to exceed thirty (30) days, or both such fine and imprisonment in the discretion of the court.

SUGGESTION #2: K.S.A. 41-715.

No minor shall represent that he is of age for the purpose of asking for, purchasing or receiving alcoholic liquor from any person except in cases authorized by law. No minor shall attempt to purchase or purchase alcoholic liquor from any person. No minor shall possess alcoholic liquor. No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by ~~such~~ alcoholic liquor. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not ~~more than two hundred dollars~~ ~~(\$200)~~ less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for not to exceed ~~thirty~~ ~~(30)~~ ninety (90) days, or both such fine and imprisonment in the discretion of the court.

SUGGESTION #3: K.S.A. 41-715.

Split the statute into two separate statutes, one dealing with minors, the other with incapacitated persons. Numbering could be along the lines of K.S.A. 41-715 and 41-715a.

In the interest of clarity, it would be our recommendation to split this one statute into two statutes. Clarity of subject is a problem because one part imposes a penalty on minors themselves for purchasing while the other part penalizes the person who sells or buys for an incapacitated person. It should also be noted in passing that furnishing liquor to a minor is made a misdemeanor offense under the criminal code (chapter 21, K.S.A.).

One other alternative may be worthy of consideration. A \$500 fine may not be a deterrent to a minor if his or her wealthy parents pay it and otherwise ignore the minor's actions. Perhaps if

required community service were to be offered as an alternative to the fine or jail, judges would be better equipped to fashion a penalty in such a way that it actually impacts on the minor regardless of his or her social status. This would also offer an alternative to children from truly poverty-stricken families that may not be able to pay a minimum \$100 fine.

PROPOSAL: Law Enforcement Authority for ABC Agents

The purpose of this Memorandum is to acquaint you with a jurisdictional problem or question concerning Liquor Control Investigators, and to propose legislation to correct that problem.

K.S.A. 41-201 states, in pertinent part:

"The director of alcoholic beverage control and such agents and employees of the director as shall be designated by the director, with the approval of the secretary of revenue, are hereby vested with the power and authority of peace and police officers, in the execution of the duties imposed upon the director of alcoholic beverage control by this act and in enforcing the provisions of this act."

Attorney General Opinion No. 75-360, dated September 10, 1975, ruled that Alcoholic Beverage Control Agents do have authority to carry firearms as "peace and police officers." ABC Agents have routinely carried firearms since then. All ABC Agents are now required to complete law enforcement training including firearms training, to re-certify periodically in use of firearms, and in general to complete all required preparations for law enforcement duty.

K.S.A. 41-201 as cited above clearly authorizes ABC Agents as police officers in enforcing the Kansas liquor laws. However, it is not at all clear whether or not an ABC Agent would have authority to enforce other state laws during the performance of his routine duties. Due to the amount of time that our Agents spend in and around private clubs and retail liquor stores, it is inevitable that they will encounter illegal drugs, prostitution, armed robberies and other crimes that are often associated with those businesses. Only last week one of our Agents came very close to an armed robbery of a liquor store. If that agent had been in a proper position to attempt an arrest of the suspect, it would have been unclear whether or not he had any authority to do so. If a shooting had resulted, the potential legal liability for the Agent and for the state would have been very unclear.

With the above considerations in mind, the following new statute is proposed for your consideration.

K.S.A. 41-201a. Alcoholic Beverage Control Agents; law enforcement powers, training requirements.

The director, each agent or employee appointed by the director with the approval of the secretary of revenue pursuant to K.S.A. 41-201 and amendments thereto shall have the authority to make arrests, conduct searches and seizures and carry firearms while investigating violations of this act and during the routine conduct of their duties as determined by the director

K.S.A. 41-201a. (contd)

or his designee. In addition to the above, the director, such agents, or employees shall have the authority to make arrests, conduct searches and seizures and generally to enforce all the criminal laws of the state as violations of those laws are encountered by such employees or agents during the routine performance of their duties. No agent or employee of the director shall be certified to carry firearms under the provisions of this section without having first successfully completed the firearm training course or courses prescribed for law enforcement officers under K.S.A. 74-5604(a) and amendments thereto. The director may prescribe by rule and regulation such other training as will be required for these agents or employees.

This proposed legislation is modeled on similar recent statutes empowering fire marshals (K.S.A. 1984 Supp. 31-157) and livestock special investigators (K.S.A. 1984 Supp. 47-416a) to carry firearms and make arrests. The occurrence of the phrase "peace and police officers" in existing statutory language that has been on the statute books since 1949 clearly indicates that this proposal is largely a matter of clarifying existing policies rather than making major changes in current practices.

PROPOSAL: Placing of certain employees of the Alcoholic Beverage Control Division, Department of Revenue under the Kansas Police and Fireman's Retirement System.

Previously submitted as SB 158.

AN ACT relating to the Kansas police and firemen's retirement system; providing for participation by the department of revenue and certain of its officers and employees.

Be it enacted by the Legislature of the State of Kansas:

Section 1. On the effective date of this act, the department of revenue shall be an eligible employer as defined in K.S.A. 74-4952 and amendments thereto, and on July 1, 1983, the department of revenue shall become a participating employer as defined by reference in subsection (13) of K.S.A. 74-4952 and amendments thereto, by subsection (24) of K.S.A. 74-4902 and amendments thereto. The entry date into the Kansas police and firemen's retirement system of the department of revenue shall be July 1, ¹⁹⁸⁵~~1982~~.

Sec. 2. "Alcoholic beverage control enforcement officer" means any alcoholic beverage control enforcement officer, agent, investigator or other employee of the division of alcoholic beverage control of the department of revenue who is vested with the power and authority of peace and police officers under K.S.A. 41-201 and amendments thereto, ~~but shall not include the director of alcoholic beverage control.~~ Wherever the word "policeman" is used in K.S.A. 74-4951 *et seq.*, and amendments thereto, it shall be construed to include the words "alcoholic beverage control enforcement officer" as defined by this section.

Sec. 3. (a) Each alcoholic beverage control enforcement officer employed by the department of revenue on July 1, ¹⁹⁸⁵~~1982~~, may become a member of the Kansas police and firemen's retirement system on the first day of the payroll period of such alcoholic beverage control enforcement officer coinciding with or following the entry date of the department of revenue, only by filing with the board of trustees of the system, on or before the entry date of the department of revenue, a written election to become a member of the system. Failure to file such written election shall be presumed to be an election not to become a member of the system. Such election, whether to become a member or not to become a member, shall be irrevocable.

(b) Each alcoholic beverage control enforcement officer who is on an authorized leave of absence or is in the military service on the department of revenue's entry date, may become a member of the Kansas police and firemen's retirement system on the first day of the first payroll period of such alcoholic beverage control enforcement officer coinciding with such alcoholic beverage control enforcement officer's return to active employment and the department of revenue's payroll only by filing with the board of trustees of the system within 10 days after such return to active

employment, a written election to become a member of the system. Failure to file such written election shall be presumed to be an election not to become a member of the system. Such election, whether to become a member or not to become a member, shall be irrevocable.

(c) Every person who is employed as an alcoholic beverage control enforcement officer on or after the entry date of the department of revenue into the Kansas police and firemen's retirement system shall become a member of the Kansas police and firemen's retirement system on the first day of such employment.

Sec. 4. (a) Alcoholic beverage control enforcement officers who become members of the Kansas police and firemen's retirement system shall be subject to all the provisions of K.S.A. 74-4951 and 74-4970, inclusive, and any amendments thereto, except as otherwise provided in this act.

(b) Each alcoholic beverage control enforcement officer who is a member of the Kansas police and firemen's retirement system and has reached the age of 65 years must file an application for retirement with the board of trustees of the system and if that alcoholic beverage control enforcement officer refuses or neglects to do so, the board shall consider the application as having been

filed on the 65th birthday of that alcoholic beverage control enforcement officer. The provisions of subsection (2)(b) of K.S.A. 74-4956 and amendments thereto, shall not apply to alcoholic beverage control enforcement officers who retire pursuant to this provision. Each alcoholic beverage control enforcement officer who is so retired shall receive a retirement benefit in accordance with the provisions of subsection (1) of K.S.A. 74-4958 and amendments thereto, on the basis of that alcoholic beverage control enforcement officer's years of credited service.

(c) Beginning with the first payment of compensation for services of an alcoholic beverage control enforcement officer after becoming a member of the Kansas police and firemen's retirement system, the employer shall deduct from the compensation of such member 7% as employee contributions. Such deductions shall be remitted, deposited and credited as provided in K.S.A. 74-4965 and amendments thereto.

Sec. 5. The division of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services the amount required to satisfy the employer's obligation under this act as certified by the board of trustees of the system in the manner prescribed in K.S.A. 74-4967 and amendments thereto, and shall present the same to the legislature for allowance and appropriation. The rate of employer contribution for the first year shall be as prescribed in subsection (6) of K.S.A. 74-4967 and amendments thereto.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

PROPOSAL: Change Residency Requirements for Retail
Liquor Store Applicants

A proposal to change residency requirements for an applicant for a retail liquor store license to one year of residency in the county and five years in the state. Presently, the residency requirement for a retail liquor store applicant is 5 years in the county and 10 years in the state.

Previously submitted in 1983 as SB 305.

AN ACT concerning the Kansas liquor control act; persons not to receive retailer's license; amending K.S.A. 1982 Supp. 41-311 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 41-311 is hereby amended to read as follows: 41-311. (a) No license of any kind shall be issued to a person:

(1) Who has not been a citizen of the United States for at least 10 years;;

(2) who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state or the United States;;

(3) who has been convicted of or has pleaded guilty to a violation of intoxicating liquor laws of any state or the alcoholic beverage control laws of the United States or has forfeited bond to appear in court to answer charges for any such violation, within the 10 years immediately prior to the date of the person's application for a license;;

(4) who has been convicted of or has pleaded guilty to a violation of any of the laws of any state relating to cereal malt beverages, within 10 years immediately prior to the date of the person's application for a license;;

(5) who has had a license revoked for cause under the provisions of this act or who has had any license issued under the cereal malt beverage laws of any state revoked for cause except that a license may be issued to a person whose license was revoked for the conviction of a misdemeanor at any time after the lapse of 10 years following the date of the revocation;;

(6) who has been convicted of or has pleaded guilty to being

the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution-;

(7) who has been convicted of or has pleaded guilty to being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes-;

(8) who is not at least 21 years of age-;

(9) who appoints or is a law enforcement official or who is an employee of the director or the board-;

(10) who intends to carry on the business authorized by the license as agent of another-;

(11) who at the time of application for renewal of any license issued under this act would not be eligible for the license upon a first application-;

(12) who is the holder of a valid and existing license issued under the laws of this state relating to cereal malt beverages and malt products unless the person agrees to and does surrender the license to the officer issuing the same upon the issuance to the person of a license under this act, except that a holder of a cereal malt beverages wholesaler's license shall be eligible to receive a beer distributor's license under this act-;

(13) who does not own the premises for which a license is sought, or does not have a written lease thereon for at least $\frac{3}{4}$ of the period for which the license is to be issued-; *or*

(14) whose spouse would be ineligible to receive a license under this act for any reason other than citizenship and residence requirements or age.

(b) No retailer's license shall be issued to a:

(1) Person who is not a resident of the county in which the premises sought to be licensed are located-;

(2) person who has not been, for at least ~~five years~~ *one year* immediately preceding the date of application, a resident of the county in which the premises covered by the license are located or a person who has not been a resident of this state for a total of at least ~~10~~ *five* years preceding the date of application, except that, if the premises sought to be licensed are located in a city which is located in two or more counties and the applicant for license is a resident of either county, the applicant shall be deemed to be a resident of each county for the purpose of qualification-;

(3) person who has beneficial interest in the manufacture, preparation or wholesaling of alcoholic beverages-;

(4) person or copartnership or association who has beneficial interest in any other retail establishment licensed under this act-;

(5) copartnership, unless all of the copartners are qualified to obtain a license-; *or*

(6) corporation.

(c) No manufacturer's license shall be issued to:

(1) A corporation, if any officer, manager or director thereof,

or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a manufacturer's license for any reason other than citizenship and residence requirements;

(2) a copartnership, unless all of the copartners shall have been residents of this state for at least five years immediately preceding the date of application and unless all the members of the copartnership would be eligible to receive a manufacturer's license under this act; *or*

(3) an individual who has not been a resident of this state for at least five years immediately preceding the date of application.

(d) No distributor's license shall be issued to:

(1) A corporation, if any officer, manager, director or stockholder of the corporation would be ineligible to receive a distributor's license for any reason. It shall be unlawful for any stockholder of a corporation licensed as a distributor to transfer any stock in the corporation to any person who would be ineligible to receive a distributor's license for any reason, and any such transfer shall be null and void, except that: (A) If any stockholder owning stock in the corporation dies and an heir or devisee to whom stock of the corporation descends by descent and distribution or by will is ineligible to receive a distributor's license, the legal representatives of the deceased stockholder's estate and the ineligible heir or devisee shall have 14 months from the date of

the death of the stockholder within which to sell the stock to a person eligible to receive a distributor's license, any such sale by a legal representative to be made in accordance with the provisions of the probate code; or (B) if the stock in any such corporation is the subject of any trust and any trustee or beneficiary of the trust who is 21 years of age or older is ineligible to receive a distributor's license, the trustee, within 14 months after the effective date of the trust, shall sell the stock to a person eligible to receive a distributor's license and hold and disburse the proceeds in accordance with the terms of the trust. If any legal representatives, heirs, devisees or trustees fail, refuse or neglect to sell any stock as required by this subsection, the stock shall revert to and become the property of the corporation, and the corporation shall pay to the legal representatives, heirs, devisees or trustees the book value of the stock. During the period of 14 months prescribed by this subsection, the corporation shall not be denied a distributor's license or have its distributor's license revoked if the corporation meets all of the other requirements necessary to have a distributor's license;

(2) a copartnership, unless all of the copartners are eligible to receive a distributor's license; *or*

(3) an individual who has not been a resident of this state for at least 10 years immediately preceding the date of application, except that:

(A) A wholesaler of cereal malt beverages properly licensed on September 1, 1948, shall be eligible for a beer distributor's license; and

(B) a person who has been a resident of the state for at least five years immediately preceding the date of application shall be eligible for a beer distributor's license.

(e) No nonbeverage user's license shall be issued to a corporation, if any officer, manager or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a nonbeverage user's license for any reason other than citizenship and residence requirements.

Sec. 2. K.S.A. 1982 Supp. 41-311 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSAL: Diversion on a DUI

Various statutes and/or administrative regulations prohibit the issuing of a liquor license (except a private club license) to any person who has been convicted of a violation of the intoxicating liquor laws. Likewise such a person may not be employed in handling alcoholic liquor. In 1966, the Kansas Supreme Court held that a conviction for driving under the influence constituted a liquor law violation (Keck v. Cheney, 196 Ka. 535).

In 1982, the DUI statute (K.S.A. 1984 Supp. 8-1567) was amended to include progressively more severe penalties for repeat violators and to allow for a diversion for first time offenders. Due to the specific provisions of this statute, the Attorney General was asked how a diversion under the DUI statute would affect a person's ability to hold a license to sell cereal malt beverage at retail. The Attorney General concluded that, for purposes of license eligibility, a diversion under K.S.A. 8-1567 is a conviction (Attorney General Opinion No. 84-21, copy attached as Exhibit 1). Due to the similarities in language, this agency felt compelled to accept the conclusions in that Opinion as equally applicable to liquor licensees and employees (Memorandum 84-1, copy attached at Exhibit 2).

Memorandum 84-1 has not met with total approval within the industry or within the legal community. Earlier this year Stephen P. Weir, a Topeka attorney speaking on behalf of a client, submitted to this agency a fairly lengthy summary of his position in opposition to Memorandum 84-1 and Attorney General Opinion No. 84-21. The following statement from Mr. Weir's discussion is particularly appropriate to this matter.

"K.S.A. 8-1567(i) states:

'(i) For the purpose of determining whether a conviction is a first, second or third or subsequent conviction for the purpose of sentencing under this section, the term "conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section. For such purpose "conviction" also includes being convicted of a violation of a law of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance. For the purpose of this section, only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account.'

*cc Kollar
Bob Storer
Mr. Lewis*

But, as you can see the definition of the term "conviction" is limited by the precise terms of this statute.

A diversion agreement may be considered a conviction "for the purpose of sentencing" upon a second or subsequent conviction.

Therefore, according to this statute a diversion agreement can only be considered a conviction after a person is convicted of a second or subsequent offense.

Not only does K.S.A. 8-1567 limit consideration of a diversion agreement to sentencing, K.S.A. 22-2910 specifically prohibits evidence of a diversion agreement from being admitted in any proceedings other than for sentencing.

K.S.A. 22-2911(d) states "A record of the fact that an individual has participated in diversion in lieu of further criminal proceedings...shall be forwarded to the division of vehicles of the department of revenue...for use in proceedings conducted under K.S.A. 8-285 or 8-1567 and amendments to these sections or any alcohol related offense as defined in K.S.A. 12-4413."

This statute does not authorize the state to use the information in any other proceedings besides those listed."

(Letter from Stephen P. Weir to Richard Hodson, dated January 2, 1985.)

The discussion that has been generated by the Opinion and Memorandum has now centered largely on what the Legislature intended. For that reason, it seems appropriate for this agency to bring this matter to the Legislature for clarification. If it is your intention that a diversion under the provisions of K.S.A. 1984 Supp. 8-1567 not prohibit a person from getting a liquor license or from being employed in handling alcoholic liquor or cereal malt beverages, the following statutes would need to be amended to exclude DUI diversions.

1. K.S.A. 1984 Supp. 41-311(a)(3)
2. K.S.A. 41-2610(c)
3. K.S.A. 41-2703(b)(4)
4. K.S.A. 41-2708(j)

In considering this matter, it should also be pointed out that a diversion on any other criminal offense, to include a felony or any other intoxicating liquor law, will not prevent a person from getting a liquor license or from being employed in a liquor business.

We are seeking a clarification of what the legislative intent is regarding this issue.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751
ANTITRUST 296-5299

March 5, 1984

ATTORNEY GENERAL OPINION NO. 84- 21

David W. Andreas
Assistant City Attorney
State Bank Building
Winfield, Kansas 67156

Re: Intoxicating Liquors and Beverages--Cereal Malt Beverages--Qualifications for Retailer's License; Conviction of Driving Under the Influence of Alcohol Includes Participation in Diversion Program

Synopsis: K.S.A. 41-2703 sets forth the requirements of a retailer's license to sell cereal malt beverages, as that term is defined by K.S.A. 41-2701. Among the requirements [at subsection (b)(4)] is a provision that renders a person ineligible for a license if, in the proceeding two years, he or she has been "convicted" of the offense of driving a motor vehicle under the influence of alcohol. In that the statute proscribing DUI (K.S.A. 1983 Supp. 8-1567) defines conviction as including participation in a diversion program, the same meaning should be given to the term whenever it appears in the cereal malt beverage laws. Accordingly, a person who has participated in a diversion program from the offense of DUI within the past two years is ineligible for a retailer's license under K.S.A. 41-2703, and if currently licensed, may have the license suspended or revoked upon such participation. While the employment by a licensee of a person who is participating in a diversion program is permissible, given the more restrictive language

David W. Andreas

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of K.S.A. 41-2708, the non-uniform application of the act it is contained within renders it subject to a city's home rule power. Cited herein: K.S.A. 1983 Supp. 8-1567, K.S.A. 12-4416, K.S.A. 1983 Supp. 22-2909, K.S.A. 41-2701, 41-2703, 41-2708, Kan. Const., Art. 12, Sec. 5.

* * *

Dear Mr. Andreas:

On behalf of the City Attorney of Winfield, Kansas, you request our opinion on a question involving the granting of retailer's licenses under K.S.A. 41-2701 et seq., which act concerns the sale of cereal malt beverages. Specifically, you inquire whether a person who has participated in a diversion program for the offense of driving while under the influence of alcohol (K.S.A. 1983 Supp. 8-1567) has been "convicted" of the offense for the purposes of K.S.A. 41-2703, and so is ineligible to obtain a retailer's license. You also inquire as to the effect of participation in a diversion program by the employee of a license holder.

The relevant statutes in the cereal malt beverage act, K.S.A. 41-2701 et seq. state as follows:

41-2703.

"(a) After examination of an application for a retailer's license, the board of county commissioners or the director shall, if they approve the same, issue a license to the applicant. The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to said applicant.

"(b) No retailer's license shall be issued to:

. . . .

"(4) A person who within two (2) years immediately preceding the date of making application has been convicted of a felony, any crime involving a moral turpitude, drunkenness, driving a motor vehicle

while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States." (Emphasis added.)

41-2708.

"The board of county commissioners or the governing body of any city, upon five (5) days' notice to the persons holding such license, shall revoke or suspend such license for any one of the following reasons:

. . .

"(c) if the licensee has become ineligible to obtain a license in this act;

. . .

"(j) for the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law;" (Emphasis added.)

The effect of the above statutes has been construed in several prior opinions of this office, most recently No. 82-269. There, it was concluded that a conviction for the offense of driving under the influence (DUI) of alcohol was grounds for denial of a retailer's license or, if an employee was involved, for suspension or revocation of license if the employment continued. This was not a new conclusion, and reaffirmed prior opinions of this office. See, e.g., Attorney General Opinion No. 73-394.

However, given the changes made to the DUI statute (K.S.A. 1983 Supp. 8-1567), a new question has arisen. In that statute, the term "conviction" is defined as including both an actual conviction before a court and participation in a diversion program. [K.S.A. 1983 Supp. 8-1567(i)]. Diversion is an option which prosecuting attorneys may extend to first-time violators, and involves payment of the prescribed fine, participation in a education or treatment program for alcohol abuse, and other requirements as the prosecutor may deem appropriate. K.S.A. 12-4416, K.S.A. 1983 Supp. 22-2909. In that no appearance before a court is involved, diversion is not generally considered as involving a plea or finding of guilty. State v. Greenlee, 228 Kan. 712 (1981). However, for the purposes

of the amended DUI statute, it now is deemed to have that effect, and accordingly counts on the defendant's records as a conviction for the required 5 year period. K.S.A. 1983 Supp. 8-1567(i).

Since both K.S.A. 1983 Supp. 8-1567 and K.S.A. 41-2703 refer to the "conviction" of an individual for the offense of DUI, they should be read in pari materia, even though the changes made in the former statute came after the latter was already in effect. This is an accepted rule of statutory construction. Capital Services, Inc. v. Dahlinger Pontiac-Cadillac, Inc., 232 Kan. 419 (1983), Claflin v. Walsh, 212 Kan. 1 (1973). In our opinion, the meaning ascribed to the term "conviction" by the DUI statute should be used as well in the retailer's licensing statute, with the result that participation in a diversion program would be sufficient to deny an application for such a license, provided the two year time period was met. An individual's election to participate in a diversion program would likewise constitute grounds under K.S.A. 41-2708(c) for a suspension or revocation of an existing license.

However, this conclusion does not apply to the participation in diversion of an employee of a retail license holder. Due to the more restrictive wording of K.S.A. 41-2708(j), which requires that an employee be "adjudged guilty" of a violation, the meaning given to the term "conviction" by K.S.A. 1983 Supp. 8-1567 is not a factor. Since there is no question that participation in diversion does not amount to being adjudged guilty, an employee in such an agreement would be able to continue in his or her employment without the licensee subject to the revocation or suspension of the retailer's license.

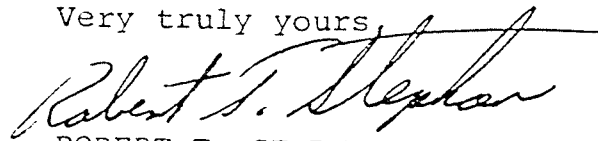
However, we are constrained to note that, due to the non-uniformity of the act containing K.S.A. 41-2708, the area is subject to the home rule authority of the City of Winfield under Article 12, Section 5 of the Kansas Constitution. The act in which the statute was adopted in its present form, L. 1976, ch. 145, contains numerous other sections which apply only to certain types of counties or cities. As a result, the fact that K.S.A. 41-2708 (section 195 in the 1976 act) is itself uniform is of no importance. City of Junction City v. Griffin, 227 Kan. 332 (1980). In that no express language appears in the cereal malt beverage act, K.S.A. 41-2701 et seq., which pre-empts the power of cities to enact their own legislation in the area of licensing, any argument that licensing is a matter of statewide concern does not change the underlying non-uniformity. Griffin, supra, 227 Kan. at 336-37. Accordingly,

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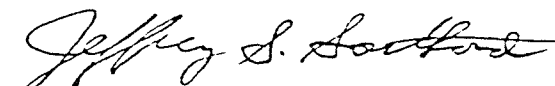
the city could, by charter ordinance, require that a licensee be subject to license revocation or suspension if he or she continues to employ a person who is participating in a DUI diversion program.

In conclusion, K.S.A. 41-2703 sets forth the requirements of a retailer's license to sell cereal malt beverages, as that term is defined by K.S.A. 41-2701. Among the requirements [at subsection (b)(4)] is a provision that renders a person ineligible for a license if, in the proceeding two years, he or she has been "convicted" of the offense of driving a motor vehicle under the influence of alcohol. In that the statute proscribing DUI (K.S.A. 1983 Supp. 8-1567) defines conviction as including participation in a diversion program, the same meaning should be given to the term whenever it appears in the cereal malt beverage laws. Accordingly, a person who has participated in a diversion program from the offense of DUI within the past two year is ineligible for a retailer's license under K.S.A. 41-2703, and if currently licensed, may have the license suspended or revoked upon such participation. While the employment by a licensee of a person who is participating in a diversion program is permissible, given the more restrictive language of K.S.A. 41-2708, the non-uniform application of the act it is contained within renders it subject to a city's home rule power.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:jm

MEMORANDUM 84-1

TO: All Retail Liquor Store Licensees
All Alcoholic Liquor Distributors
All Cereal Malt Beverage and Strong Beer Distributors
All Farm Winery Licensees
All Alcoholic Liquor Importers doing business in Kansas

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Diversion on a DUI is a Conviction

DATE: April 10, 1984

K.S.A. 1983 Supp. 41-311(a)(3) prohibits the issuing of a license of any kind to any person "Who has been convicted of a violation of intoxicating liquor laws of any state..." The Kansas Supreme Court in Keck v Cheney, 196 Kan. 535 (1966) expressly held that a conviction on a charge of DUI under K.S.A. 8-1567 is a conviction of a violation of the intoxicating liquor law for purposes of K.S.A. 41-311. The Kansas Legislature seems to have implicitly recognized this when in 1983 it added K.S.A. 1983 Supp. 41-311(a)(14), which states that a license shall not be issued to a person whose spouse is ineligible for a license for any reason except citizenship, residence requirements, age, or conviction of DUI.

K.S.A. 8-1567 prohibits the operation of a motor vehicle while under the influence of intoxicating liquor or drugs; specifies the penalties for first, second, third or subsequent convictions; and allows an accused first-time offender to enter into a diversion under certain circumstances and with certain conditions. It has long been the understanding of this agency, and we have so advised licensees that a diversion is not the same as a conviction and therefore, it will not disqualify a licenseholder under K.S.A. 41-311.

On March 5, 1984, Attorney General Robert T. Stephan issued Attorney General Opinion No. 84-21, which deals with diversions under K.S.A. 8-1567 (the DUI statute) as they would affect cereal malt beverage licensees. That Opinion concludes as follows:

"In conclusion, K.S.A. 41-2703 sets forth the requirement of a retailer's license to sell cereal malt beverages, as that term is defined by K.S.A. 51-2701. Among the requirements [at subsection (b)(4)] is a provision that renders a person ineligible for a license if, in the preceding two years, he or she has been 'convicted' of the offense of driving a motor vehicle while under the influence of alcohol. In that the statute proscribing DUI [K.S.A. 1983 Supp. 8-1567] defines conviction as including participation in a diversion program, the same meaning should be given to the term whenever it appears in the cereal malt beverage laws."

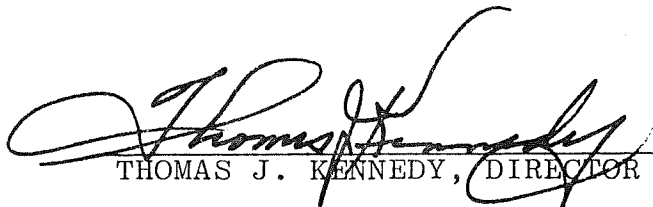
MEMORANDUM 84-1
April 9, 1984

Because the term "conviction" occurs in K.S.A. 1983 Supp. 41-311(a)(3), the same as in K.S.A. 41-2703, the principles and conclusions expressed in Attorney General's Opinion No. 84-21 are equally applicable to alcoholic liquor licensees. Consequently, the Alcoholic Beverage Control Division may no longer except diversions on charges of DUI from the provisions of K.S.A. 41-311. A diversion on a charge of DUI will now disqualify an applicant or licensee under K.S.A. 1983 Supp. 41-311(a)(3). This change will not affect any current license holders or applicants who have already entered into a diversion program in reliance upon this agency's former policy concerning DUI diversions. This change will go into full force and effect ten days after the date of this Memorandum.

It should be emphasized that Attorney General's Opinion No. 84-21 is based on the unique nature of diversions under K.S.A. 8-1567. Therefore, it is not applicable to diversions on other liquor law violations.

In summary, based on this new Attorney General's Opinion, a diversion on a DUI will be considered a conviction for the purposes of qualifying for a license under K.S.A. 41-311, while a diversion on other than DUI remains unchanged.

Furnished for your information and guidance.


THOMAS J. KENNEDY, DIRECTOR