

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRSThe meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson11:00 a.m./~~p.m.~~ on January 21, 1987 in room 254-E of the Capitol.

All members were present.except:

Committee staff present:

Mary Galligan, Legislative Research
Emalene Correll, Legislative Research
Mary Torrence, Assistant Revisor of Statutes
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Mr. Jeffrey Ellis, Attorney at Law, Kansas City, Kansas
Mr. Dean Campbell, President, Campbell Distributors, Inc., Manhattan, Kansas

The Chairman stated that the meeting this morning is to have the Committee briefed on the Report of the Kansas Liquor Law Revision Commission. The formal document is the Final Report and Recommendations. (Attachment #1)

The commission members present were welcomed by the Chairman. They were Mr. Jeffrey Ellis and Mr. Dean Campbell. Senator Bill Morris, of this Committee, was also a member of the commission.

The Chairman said he had served on the interim committee concerning parimutuel wagering and thus recognized the amount of work and effort that goes into a report such as this. He commended the entire commission for its dedication and efforts. The Chairman urged Committee to carefully consider the report. All of next week will be committed to working on this report and on the liquor by the drink proposal in order to give staff direction as to how to proceed on the liquor by the drink statute. Next week the Committee will decide what elements are relevant to liquor by the drink.

Mr. Ellis was the first conferee. A copy of his remarks before the Committee is part of these Minutes. (Attachment #2) He gave the Committee a complete review of the Report which included: purpose of the commission; recommendations concerning on-premise establishments; recommendations concerning all segments and the conclusions; and answered questions from Committee.

Mr. Campbell assisted in answering questions from the Committee, and he stated that the recommendations were to try to bring together the total industry.

The conferees were thanked by the Chairman for the time they have given the state in this study, as well as for their appearing today.

It is the Chairman's intention to hear from the members of the public who wish to speak to the report, both tomorrow and on Monday. Following that the Committee will decide what elements it wants to consider in the bill.

The meeting was adjourned at noon.

*Attachment # 1
1-21-87*

FINAL REPORT

ALCOHOLIC BEVERAGE CONTROL LAWS

KANSAS LIQUOR LAW REVIEW COMMISSION

**Judge Herb Rohleder
Chairman**

December 1986

*Attachment # 1
1-21-87 FSA*

The Honorable John Carlin
Governor of Kansas
Statehouse
Topeka, Kansas

Dear Governor Carlin:

Transmitted herewith is the final report and recommendations of the Kansas Liquor Law Review Commission formed by you in October, 1985.

The Commission has conducted an extensive review and analysis of Kansas alcoholic beverage control laws and operations. It has developed over 50 recommendations for actions that are necessary to implement the recently approved liquor-by-the-drink amendment to the Kansas Constitution as well as modernize and reform other alcoholic beverage control laws.

The Commission believes its recommendations will effectively implement the wishes of the people of Kansas and improve the state alcoholic beverage control laws. At the same time, the Commission recommendations will not sacrifice necessary control or promote excessive alcohol consumption.

I wish to express my sincere appreciation to the Commission members for their diligence and hard work. I also want to acknowledge the valuable contribution of Mr. Dean Reynolds, Commission staff, without whose efforts the Commission could not have operated. On behalf of the Commission, I want to thank you for the opportunity to serve the people of Kansas.

Very truly yours,



Herb Rohleder

District Judge Herb Rohleder
Chairman, Kansas Liquor Law Review Commission

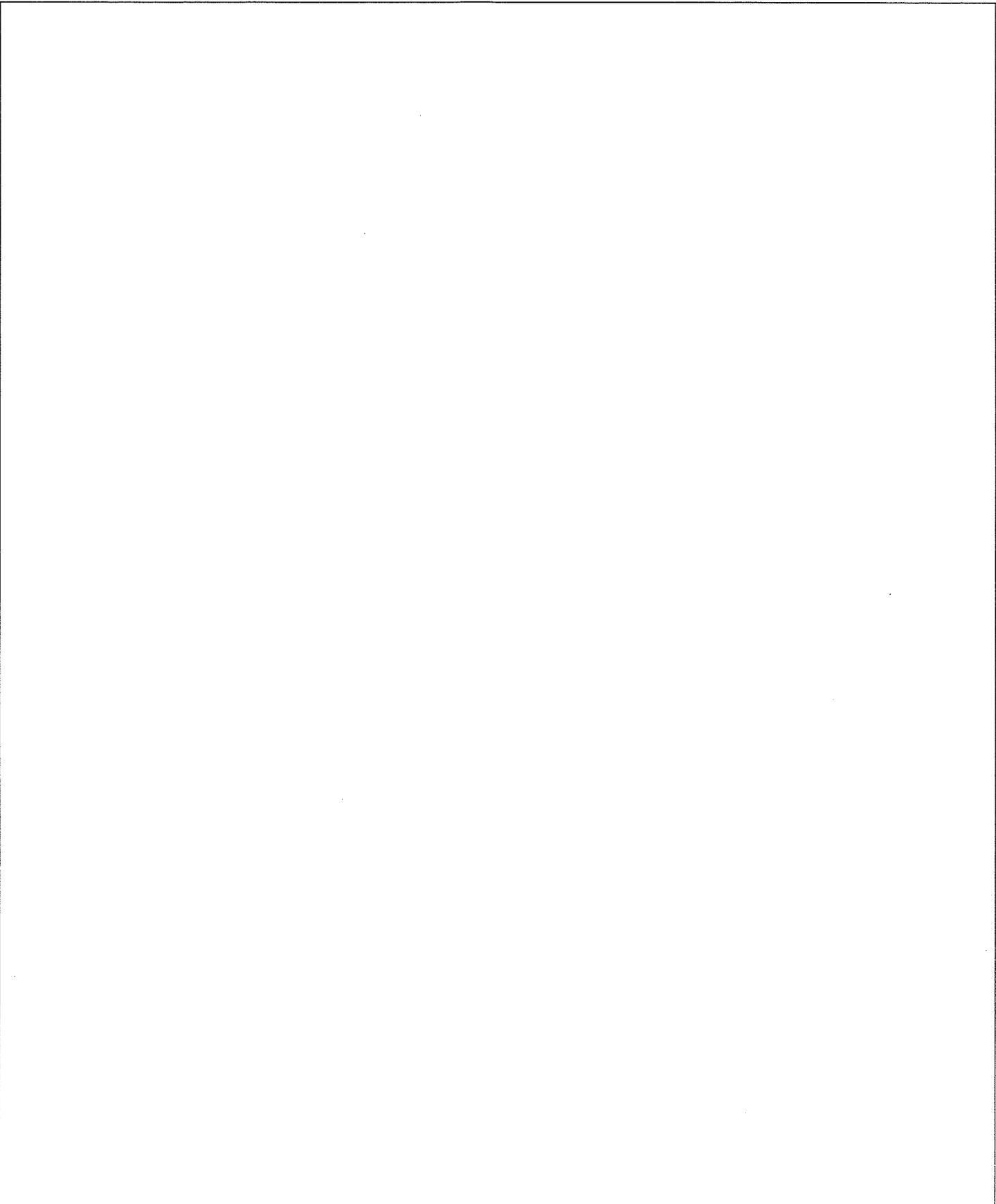


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FOREWORD

Kansas voters faced an historic decision in November 1986. The Constitutional Amendment authorizing the sale of liquor-by-the-drink in public places provided an opportunity to make a sharp break with the past and to end some of the historical hypocrisies and public ruses existing in Kansas alcoholic beverage laws. The Amendment passed overwhelmingly, garnering 60 percent of the total vote and a majority in 36 counties. The results indicate a strong public willingness to reform and modernize the State's restrictive alcoholic beverage control laws.

For the past fifteen months, the Kansas Liquor Law Review Commission has studied the options available for implementing the constitutional amendment as well as other desirable changes in state liquor control laws. The Commission has made over 50 recommendations which, if adopted, will change significantly the structure and operation of the Kansas liquor industry. The recommendations are designed to effectively implement the liquor-by-the-drink amendment as well as to end the many unnecessary and inappropriate inconsistencies that have developed in Kansas law over time. The Commission firmly believes that adoption of its recommendations will respond to the wishes of the public and modernize the State's liquor industry. At the same time, it believes the recommendations will not sacrifice necessary controls on the sale and consumption of alcoholic beverages or promote excessive consumption of those products.

As were the voters, the Kansas Legislature is faced with historic decisions. The Liquor Law Review Commission believes its recommendations provide the Legislature with a road map for responding to the challenges it faces and to the expressed wishes of the people of Kansas.

INTRODUCTION

The sale and consumption of alcoholic beverages in Kansas has been a matter of concern, controversy and extensive state regulation since the early days of statehood. In 1880, Kansas voters approved a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors. This was the first state constitutional ban against alcoholic beverages in the country. Passage of the 18th Amendment to the U.S. Constitution (Prohibition) prompted little change in already "dry" Kansas.

The 21st Amendment to the U.S. Constitution repealed Prohibition and gave the States control over their internal markets for alcoholic beverages. In response, the Kansas Legislature submitted a proposed constitutional amendment to the voters in 1934 which would have empowered the Legislature to regulate and tax liquor. The amendment was defeated.

In 1937, the Kansas Legislature classified beer with an alcoholic content of 3.2 percent by weight or less as cereal malt beverage, and excluded it from the statutory definition of an intoxicating liquor. This definition authorized the sale of "3.2" beer for both on- and off-premise consumption throughout the State. Thus, even though intoxicating liquors were banned, Kansas did have access to certain alcoholic beverages.

In 1948, Kansas voters approved a constitutional amendment authorizing the Legislature to "regulate, license, and tax the manufacture and sale of intoxicating liquor . . . (and) regulate the possession and transportation of intoxicating liquors." That amendment also provided that "the open saloon shall be and is hereby forever prohibited." Prohibition of the "open saloon" meant that the voters in effect approved the sale of packaged liquor in retail stores, but did not approve places open to the public that serve liquor by the drink.

To implement the 1948 provision, the Legislature passed the Liquor Control Act in 1949. This Act authorized package sales of liquor in counties in which the amendment was approved by the voters and established a comprehensive system of regulating, licensing, and taxing alcoholic liquor. The Alcoholic Beverage Control (ABC) was created to enforce the Act.

The method of distributing alcoholic beverages was outlined in the Act. A 3-tier system was established where three independent levels of business—the supplier, the wholesaler, and the retailer—each operated separately, and persons in one tier were prohibited from holding a financial interest in another.

Retail package liquor prices were controlled with the first sales in 1949 and have continued to be regulated since. From 1949 to 1959, retail prices were controlled through an administrative regulation authorizing suppliers to set minimum prices. This regulation was successfully challenged in the courts in 1958, and the Legislature passed a minimum liquor price law in 1959. In 1961, the Legislature revised this law and set guidelines for the ABC Board of Review to set minimum wholesale and retail liquor prices.

After passage of the 1948 constitutional provision, numerous questionable "private club" arrangements were created to serve liquor to club members and circumvent the prohibition on open saloons. The Legislature responded to this law enforcement problem by enacting the Private Club Licensing Act of 1965. This Act authorized the consumption of alcoholic liquor on the premises of private clubs as consumption "in a place which the general public has no access;" and placed a minimum membership fee and waiting requirement on private club members.

Kansans voted on an amendment to the Constitution to remove the open saloon prohibition in 1970. This proposition was rejected by a narrow margin.

In 1978, the Legislature passed a law permitting restaurants doing 50 percent of their business in food to sell liquor-by-the-drink on a county option basis. This law was overturned by the Kansas courts which caused the Legislature to attempt to redefine "open saloon". The new definition, which would have allowed clubs doing more than 50% of their business in food to sell liquor-by-the-drink to the general public, was also struck down by the courts.

Finally in 1979 the Legislature enacted a bill authorizing all private clubs to sell liquor by the drink to their members and bona fide guests. This law eliminated "liquor pools," which had to this point been the mechanism most private clubs used to dispense liquor. It also permitted class B (for profit) clubs deriving at least 50 percent of their gross receipts from the sale of food to enter into reciprocal membership agreements with each other. Under the reciprocal agreement, a member of one club is granted access to all other clubs having entered into reciprocal agreements with the member's club.

Until 1979, Kansas operated under the open wholesaling system in which exclusive distributorship arrangements between suppliers and wholesalers were prohibited. This was replaced with an exclusive franchise system in 1979. This system authorized franchise agreements giving one wholesaler the exclusive right to distribute a supplier's particular brand or brands in a specific geographic area. The minimum price markup system for wholesalers was also abolished in 1979. It was, however, maintained for retail package liquor prices.

Apart from these major changes, the Legislature has historically made few modifications in alcoholic beverage control laws. Despite changes in economic reality and public attitudes toward alcohol consumption, the State has never comprehensively reviewed the entire system and set of laws and regulations governing the liquor industry.

In absence of such a review, some of the provisions of the Liquor Control Act and accompanying regulations have become outdated and burdensome to both the society and the industry. Alcoholic beverage laws written decades ago often do not fit well with the realities of the 1980's. Legislative changes commonly have been attempts to solve various problems within the industry or to circumvent severely restrictive constitutional provisions. These short run solutions have, at best, resulted in an inconsistent and hypocritical system and, at worst, created new problems in need of solutions.

The liquor-by-the-drink amendment presents an opportunity to partake in a much needed comprehensive review of the alcoholic beverage control laws. A study of the entire system, as well as individual segments, was needed in order to modernize and streamline the patchwork pattern existing today.

AN OVERVIEW OF THE COMMISSION

The Kansas Liquor Law Review Commission was created by Executive Order 85-83 of Governor John Carlin on September 19, 1985. The Commission was chaired by the Honorable Herb Rohleder, District Court Judge, and consisted of 13 members. Membership included four state legislators (two from each house) and nine members with experience in the alcoholic beverage industry or other general expertise in current liquor and cereal malt beverage laws. The Commission formed three subcommittees to study the current laws and conditions and draft recommendations for full Commission consideration. The subcommittees included:

Wholesalers/Suppliers — to review issues pertaining to Kansas licensed spirits, wine and beer wholesalers and suppliers of alcoholic beverages.

Off-Premise Establishments — to review issues pertaining to retail establishments where sales are for consumption off the premises only.

On-Premises Establishments — to review issues pertaining to retail establishments where consumption is permitted on the premises only.

The members of the Commission include:

Herb Rohleder
District Judge
Great Bend, Kansas

Wayne Bennett, Owner
Bennett Retail Liquor Store
Topeka, Kansas

Dean Campbell, President
Campbell Distributors, Inc.
Manhattan, Kansas

Sam Cohen, President
Ramada Inn
Topeka, Kansas

Paul DeBauge, President
DeBauge Brothers, Inc.
Emporia, Kansas

Jeffrey Ellis
Attorney at Law
Holbrook, Ellis & Heaven, P.A.
Kansas City, Kansas

Diane Gjerstad
Representative
State of Kansas
Wichita, Kansas

Robert H. Miller
Representative
State of Kansas
Wellington, Kansas

Bill Morris
Senator
State of Kansas
Wichita, Kansas

Nancy Parrish
Senator
State of Kansas
Topeka, Kansas

Leslie Rudd, President
Standard Liquor Corp.
Wichita, Kansas

Richard Trites
Executive Vice President
Premier Wine & Spirits
Overland Park, Kansas

Charles Yunker
Department Adjutant
American Legion
Topeka, Kansas

The Commission was formed to conduct a comprehensive review of the current alcoholic beverage control laws. It was to forward to Governor Carlin and the Legislature recommended actions that would be necessary if the liquor-by-the-drink amendment was approved, as well as recommend other necessary changes in Kansas alcoholic beverage control laws. The general charge of the Commission as outlined in Governor John Carlin's Executive Order was:

- (1) Conduct a comprehensive study and review of the existing Liquor Control Act, Club Licensing Act, and other liquor laws, and the cereal malt beverage laws;
- (2) Identify problem areas in current statutes and regulations that pertain to alcoholic liquor and cereal malt beverages;
- (3) Recommend changes and modifications in current statutes and regulations that pertain to alcoholic liquor and cereal malt beverages; and
- (4) Recommend alternatives to be considered should the amendment (liquor-by-the-drink) to the Constitution pass.

The first effort of the Commission was to conduct an overview of the Kansas liquor and cereal malt beverages statutes and regulations. The overview, which included comparative reviews of other states' alcoholic beverage control laws, produced a compilation of possible problem areas and issues for consideration. The Commission was assisted in its review by a study of the State's retail liquor industry completed for the Kansas Department of Revenue by Dr. Darwin Daicoff, Professor of Economics at the University of Kansas. The study, entitled "The Kansas Retail Liquor Industry," is available upon request from the Kansas Department of Revenue. The Kansas Department of Revenue Planning and Research Bureau prepared an analysis of the taxation of alcoholic beverages in Kansas. In their deliberations, the subcommittees heard from representatives of various interest groups knowledgeable in the alcoholic beverage industry. Harley Duncan, Kansas Secretary of Revenue, and John Lamb, Director of the Alcoholic Beverage Control Division, appeared regularly to present information on various aspects of the law and the alcoholic beverage industry.

After studying the structure and operation of the beverage industry, current law and possible alternatives, each subcommittee formulated recommendations concerning its particular segment of the industry. The subcommittee compiled these preliminary recommendations into reports to the full Commission in May, 1986.

The Commission then held public hearings around the State to obtain public input and reaction to the preliminary recommendations. Hearings were held in Salina, Topeka, Wichita and Overland Park in June 1986. The Commission heard from drug and alcohol treatment agencies, alcoholic beverage industry representatives and concerned citizens.

Commission staff support was provided throughout by the Kansas Department of Revenue.

MAJOR RECOMMENDATIONS

Liquor-by-the-drink

The Liquor Law Review Commission makes several recommendations regarding the implementation of the liquor-by-the-drink Constitutional Amendment. Among the recommendations are:

- (1) Liquor-by-the-drink establishments should be licensed and regulated by the ABC;
- (2) Ownership and licensing requirements for liquor-by-the-drink establishments should be similar to those now required of Class B private clubs;
- (3) An annual license fee of \$2,000 should be required of liquor-by-the-drink premises (see other license fees below);
- (4) The private club system should be maintained in both liquor-by-the-drink (wet) counties and non-liquor-by-the-drink (dry) counties;
- (5) A special events license should be established to allow individuals and organizations to serve liquor at special events and fund raisers;
- (6) A caterer's license, which would not be tied to specific premises, should be established to allow catering to special events;
- (7) A special events license should be required to be obtained by a caterer to serve an event on non-licensed premises;
- (8) Reciprocity among all class B (for profit) private clubs should be eliminated;
- (9) Minimum food requirements for all private clubs should be eliminated;
- (10) Guests of management should be prohibited in private clubs;
- (11) Class B club membership fees and fees for reciprocal agreements (class A clubs) should be paid to the State, with an administrative charge being retained by the club.

Alcoholic Beverage Handler Training and Licensing

The Commission recommends implementation of an Alcoholic Beverage Handler Training Program as a means of reducing the incidence of drinking and driving, sales to minors, and other violations of the alcoholic beverage control laws. Under the recommendation, anyone who is affiliated with on-premise sales establishments and who may be in a position to serve or handle alcoholic beverages must complete a State-mandated training program. Upon completion of the training, an Alcoholic Beverage Handler could be licensed by the ABC. The training programs would concentrate on the identification and handling of customers under the influence and the identification of under-age customers. The training programs would be certified and regulated by the ABC, but the training would be offered by other providers. Violations of beverage control laws could result in sanctions against the server or handler's license.

Point of Purchase and Delivery of Product

The current four-tier purchasing system, where strong beer, wine and spirits flow from supplier to wholesaler to liquor retailer to private club, should be replaced by a system providing greater options to on-premise establishments and their suppliers effective July 1, 1988. The Commission recommends granting on-premise establishments the option of buying either from a wholesaler or a liquor retailer. Additionally, both wholesalers and liquor retailers should have the option to deliver to on-premise establishments. The recommended system is similar to the current system used for cereal malt beverages where wholesalers may sell and deliver to private clubs and other on-premise licensees. A retailer or a retailer's authorized agent should be permitted to pick up products at the wholesale level.

Minimum Price Markup System & Price and Brand Advertising

The Commission recommends abolishing the minimum price markup system and lifting the prohibition on price and brand advertising as of July 1, 1988. The minimum price markup system governs the price of distilled spirits and wine at the retail liquor store. Currently, liquor retailers are not allowed to advertise brands or prices. The effective date is intended to prevent significant market instability and allow liquor retailers a transition period.

Distinction Between Cereal Malt Beverage and Strong Beer

The Commission recommends maintaining the current distinction between cereal malt beverage (beer containing less than 3.2 alcohol by weight) and strong beer. The sale of strong beer for off the premises consumption should continue to be restricted to retail liquor stores. Sales of strong beer for on-premise consumption should be restricted to private clubs and liquor-by-the-drink establishments.

License Fees

Most of the State alcoholic beverage license fees have not been changed since they were originally set (in 1949 for wholesalers and retailers and 1965 for private clubs). The Commission recommends changing the annual fees as follows:

<u>LICENSE</u>	<u>CURRENT FEE</u>	<u>RECOMMENDED FEE</u>	
Liquor Wholesale	\$1,250	Spirits Wholesale:	\$1,000
		Wine Wholesale:	\$1,000
Beer Wholesale	CMB: \$300 Strong: \$150	(All) Beer Wholesale:	\$1,000
Liquor Retail	\$100		\$ 500
Class A Club	\$250	Open more than 4 days a week:	\$1,000
		Open less than 4 days a week:	\$ 500
Class B Club	\$1,000		\$1,000
Liquor-by-the-drink	--		\$2,000
Caterer	--		\$1,000

RECOMMENDATIONS CONCERNING ALL SEGMENTS

Strengths of Beer

Recommendation — The current distinction between cereal malt beverage and strong beer should continue. The sale of strong beer should be restricted to retail liquor stores, private clubs and liquor-by-the-drink establishments. The sale of CMB for on- and off-premise consumption should continue to be restricted to premises licensed by the local unit of government. CMB licenses, however, should be approved by the State in the form of a stamp from the ABC before becoming valid. A fee should be established to offset any costs involved. This recommendation applies only to the point of sale of CMB and does not affect any of the other recommendations regarding the licensing and sale of CMB.

Why recommendation was made — Permitting stronger beers to be sold in current CMB outlets would seem to run contrary to the trend toward moderation. With stronger beers in taverns, the incidence of drinking and driving could conceivably rise. The purchase of stronger beers by minors would likely increase, considering the lack of enforcement directed toward grocery and convenience stores.

The State has historically taken the position that weaker beer should be more accessible to the general public, may be consumed in public, etc. This policy would be altered with the elimination of the current distinction.

If the distinction were eliminated and the sale of all strengths of beer were permitted at both current CMB outlets and retail liquor stores, liquor retailers would be placed in a competitive disadvantageous position. Grocers and convenience store operators can operate on a smaller profit rate (than liquor retailers) on sales of beer since it comprises a relatively small proportion of total sales. Because of the heavy reliance on beer sales by liquor retailers (sales of beer comprise up to 50 percent of business) and the inability of liquor retailers to compete with CMB outlets, elimination of the distinction would eliminate large numbers of liquor retailers.

Statement by Judge Herb Rohleder

The failure of the Commission to recommend elimination of the distinction between cereal malt beverage and so-called strong beer is disappointing. I disagree with the recommendation to maintain the hypocritical distinction. Maintaining the arbitrary distinction serves only to perpetuate a myth that is not grounded in reality. Current law is inconsistent in that it incorrectly defines 3.2 beer as non-intoxicating, and places many more restrictions on "strong" beer, despite the fact that tests prove there is little difference in the alcoholic content of 3.2 beer and "strong" beer. There should be no distinction made between strengths of beer. All strengths of beer should be permitted to be sold at current CMB outlets as well as retail liquor stores.

The Range in Strengths of Beer

There seems to be widespread public confusion regarding actual alcoholic content or strengths of beer. There is a perception that "strong" beer commonly contains significantly more alcohol than CMB. In reality, many domestic strong (non-CMB) beers contain 3.5 to 4.0 percent alcohol by weight.

This confusion about alcohol content caused the Commission a great deal of difficulty in dealing with recommendations to retain or eliminate the current CMB/strong beer distinction. The Commission therefore recommended that additional tests of alcohol content be conducted. The results of those tests are presented in Appendix A of the Report.

Point of Purchase and Delivery of Product

Recommendation — The current four-tier purchasing system where strong beer, wine and spirits flow from supplier to wholesaler to liquor retailer to private club should be replaced by an optional system. On-premise establishments should have the option of either buying from a wholesaler or a liquor retailer. Wholesalers and liquor retailers both should have the option to deliver, and charge for delivery, to on-premise establishments. Wholesalers should be permitted to deliver to retailers between the hours of 7 a.m. to 11 p.m. Delivery by retailers should be restricted to normal liquor retail business hours (9 a.m. to 11 p.m.). Deliveries to non-licensed premises should continue to be prohibited. Wholesalers and retailers should have the option to add delivery charges to the price of the product. A retailer or retailer's agent may pick up products from the wholesaler. A wholesaler should have the ability to sell or transfer products to other wholesalers and to suppliers.

Why recommendation was made — Private clubs, and soon liquor-by-the-drink establishments, are in reality retailers and thus should be given the same opportunity to buy from and be delivered to by a wholesaler that other retailers have. Such a system can be instituted without sacrificing necessary controls on the sale of alcoholic beverages. While allowing delivery by wine and spirits wholesalers may add cost to certain areas of the industry, the Commission believes the marketplace should be the determining force. In areas where it is economically feasible, wholesalers will likely deliver directly to on-premise establishments (a 3-tier system). Where it is not, the current system where clubs (and now liquor-by-the-drink establishments) buy from retail liquor stores, will probably prevail. Allowing retail liquor stores to deliver their products to licensed premises will allow them to provide a service to their clients.

Kansas is one of only five license states in which products must flow through retail liquor stores to on-premise retailers.

Taxation

Recommendation — The Commission finds that the current system of alcoholic beverage taxation has two defects: (1) it presents opportunities for tax evasion that are not cost-effective for the State to enforce and that create unfair competition among sellers; and (2) it discriminates unnecessarily between types of products and points of sale.

The Commission therefore recommends that the current alcoholic beverage taxation be revised in accordance with the following principles:

- (1) All alcoholic beverage products (including cereal malt beverage) should be treated uniformly as to taxation.
- (2) Special excise levies on limited components of the alcoholic beverage market should be avoided.
- (3) Any reform should be revenue neutral.

The Commission notes that these objectives could be met by a system in which the current liquor enforcement tax and liquor excise tax are repealed and replaced with a system of (a) imposing the sales tax on all retail sales of alcoholic beverages; (b) instituting an excise tax on wholesale transactions; and (c) increases in gallonage rates.

Why recommendation was made — The present alcoholic tax system offers opportunities for tax evasion by imposing high-rate, difficult to collect, excise taxes on on-premise sales of alcoholic liquor. This creates unfair competition and breeds further evasion. Also, the current structure unnecessarily discriminates between types of products and points of sale primarily in its treatment of CMB. Eliminating the excise and enforcement taxes would greatly reduce the number of points of special taxation, thus simplifying the complex system. Under-collection of alcoholic beverage taxes (estimated by the Department of Revenue at between \$500,000 and \$1 million per year) could be remedied as tax compliance is improved.

Allocation of Tax Revenue

Recommendation - The Commission recognizes the importance of the alcohol and drug abuse programs offered around the State and recommends an expanded State role in:

- (1) The allocation of funds to such prevention, intervention, and treatment programs.
- (2) Reviewing the effectiveness of the participation of local units of government in allocation of funds to such programs.

Why recommendation was made — The recommendation recognizes that liquor tax revenues are likely to be dedicated to prevention, intervention and treatment programs. It is designed to ensure that those funds are used effectively at the local and state levels.

License Fees

Recommendation — The Commission recommends the following annual fees for each license:

Spirits wholesale:	\$1,000
Wine wholesale:	\$1,000
Beer wholesale:	\$1,000
Liquor retail:	\$ 500
Liquor-by-the-drink:	\$2,000
Class A private club——	
Open 4 days a week or more:	\$1,000
Open less than 4 days a week:	\$ 500
Class B private club:	\$1,000
Caterer:	\$1,000

Why recommendation was made — Current license fees have existed for decades without change. In studying the license fee structure, the Commission operated with three principles: (1) the value of owning a license should be reflected in the license fee; (2) the license fee should relate to the amount of administrative and enforcement work required; (3) to the extent possible, no distinction should be made between types of licenses (beer, wine, and spirits). The liquor-by-the-drink license was set higher than the class B private club license because such establishments enjoy a broader base from which to draw business.

Licensee's Spouse and Eligibility

Recommendation — The spouse of a licensee should meet all of the licensing requirements (except citizenship, residency and age) before original issuance of a license (entry into the business). While the license is being held, the licensee should not be disqualified if his/her spouse fails to meet all of the requirements. No transfers of a license between spouses should be permitted.

Why recommendation was made — A licensee should not be penalized by the actions of his/her spouse. The recommendation continues the prevention of an ineligible person from obtaining a license through his/her spouse.

DUI Violations and Under-Age Purchases

Recommendation — Stiff penalties should continue for DUI violations and sale of liquor to underage persons. Underage persons attempting to purchase liquor or beer, or adults attempting to purchase liquor or beer for underage persons, should be subject to criminal prosecution.

Why recommendation was made — The problems of drinking and driving, as well as underage purchases and consumption are of extreme importance to the Liquor Law Review Commission. The recommendation ensures a continued policy of intolerance toward illegal actions.

Mandatory Minimum Penalty For Purchases By Minors

Recommendation — A mandatory minimum penalty of a \$100 fine should be imposed for minors who possess an alcoholic beverage(s) or use false or altered identification to purchase or attempt to purchase an alcoholic beverage(s).

Why recommendation was made — A mandatory minimum penalty places more responsibility on the underage individual. By increasing the cost of using false identification and consuming alcohol, the State can positively affect the serious and growing problem of alcohol consumption and abuse by minors.

Division of Alcoholic Beverage Control

Recommendation — The Alcoholic Beverage Control Division should be maintained as a subdivision of the Department of Revenue. The ABC Board of Review should be increased from the current three members to five members. They should be appointed by the Governor with not more than three members from any one political party. The Alcoholic Beverage Control Division must be adequately staffed to provide thorough, consistent enforcement of liquor laws and regulations. ABC Agents should have authority to issue citations for violations of liquor laws and regulations to be prosecuted administratively by the ABC with fines and license suspension or revocation as possible penalties. A significant increase in the number of agents, auditors, and clerical persons over current staffing of the ABC should be anticipated.

Why recommendation was made — The Department of Revenue and the ABC sustain a good working relationship. With only three members on the ABC Board of Review, there exists the possibility of one or two individuals dominating actions. Consistent and thorough enforcement and administration of the state's alcoholic beverage laws is impossible without adequate staffing.

Director of the ABC

Recommendation — (1) K.S.A. 41-206 should be amended to remove restrictions placed on the Director of the ABC concerning his involvement in conventions, trade shows, etc.

Why recommendation was made — The recommendation is an effort to relieve the Director of unnecessary restrictions not imposed on other state employees.

Employees of the ABC

Recommendation — (1) The residency requirement for ABC employees should be repealed, except that the Director and Deputy Director should continue to be subject to a 5-year residency requirement. (2) ABC employees should be subject to the same regulations regarding conflicts of interest and gifts as other state employees.

Why recommendation was made — The recommendation is an attempt to promote fair hiring practices and relieve ABC employees of restrictions not placed on other state employees.

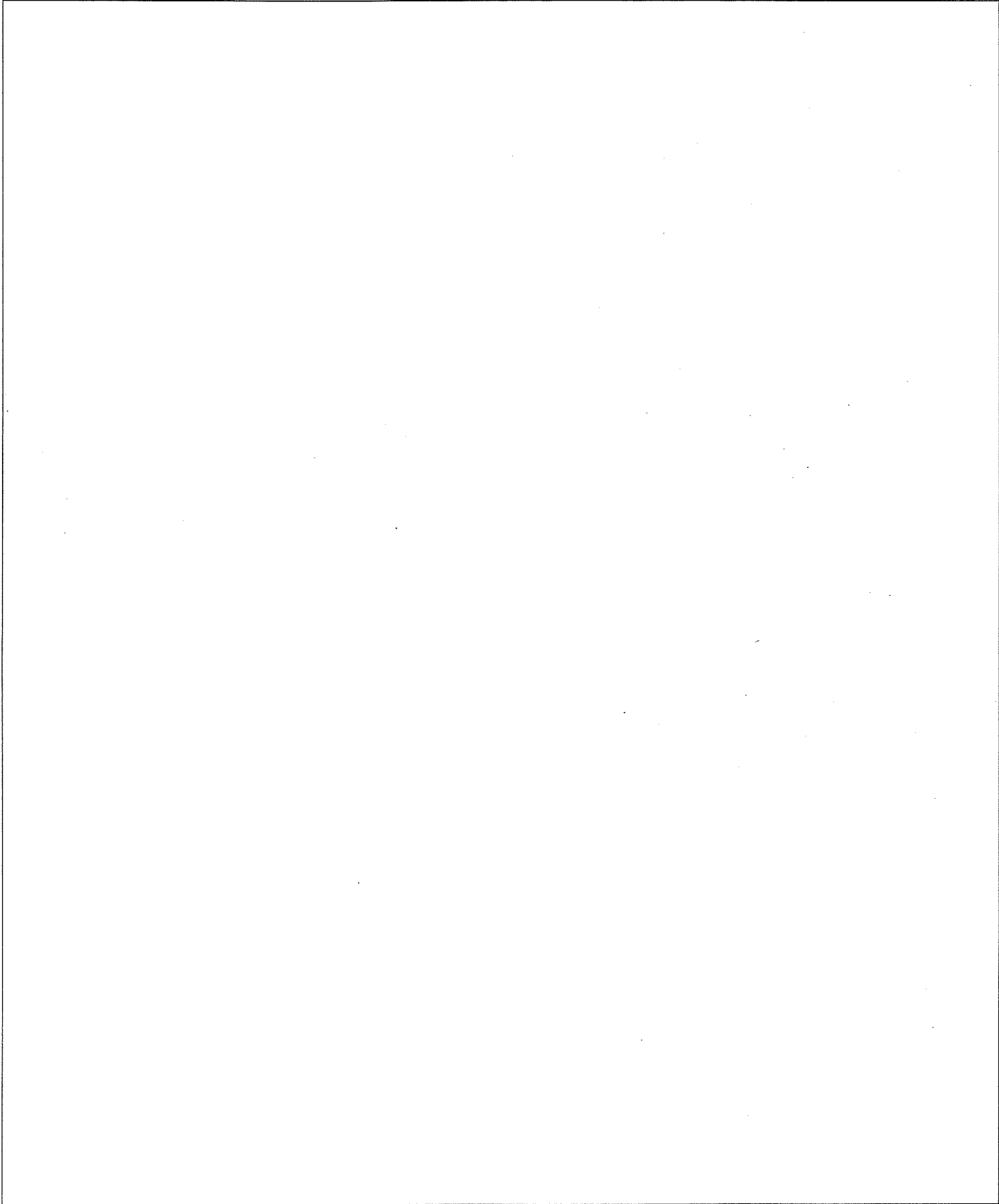
Service of Wholesalers & Retailers

Recommendation — (1) Wholesalers and retailers should have the ability to serve as city and county commissioners if there is no direct supervision of police activities at that level. (2) Wholesalers and retailers should be permitted to serve as board members and officers of fraternal or private clubs, but they should be prohibited from doing business with the club.

Why recommendation was made — The recommendation allows for a wholesaler or retailer to serve in positions normally available to other persons. At the same time, the recommendation avoids potential conflicts of interest.

Submission of Report to Committees

The Commission recommends submission of final report to the Chairman of the Federal & State Affairs Committee of both the Senate and House of Representatives and to the Revisor of Statutes Office.



RECOMMENDATIONS CONCERNING ON-PREMISE ESTABLISHMENTS

Licensing Requirements

Recommendation — Licensing requirements for on-premise establishments should be made consistent throughout the State regardless of the type of license or whether the county is wet or dry. The only distinction, of course, is that liquor-by-the-drink licenses should be allowed only in wet counties. The individual holder of any liquor or beer license should be required to have been a resident of the State of Kansas for at least one year regardless of whether the license is issued to an individual person or individuals within a partnership or joint venture. The residency requirement should not apply to corporations as license holders. For a corporation to qualify for a license, it must be a domestic Kansas corporation or a foreign corporation authorized to do business in Kansas. All corporate license holders must be and remain in good standing with the Kansas Secretary of State. Sufficient information must be garnered from the license application process to identify corporate stockholders, officers and directors, who should all be required to meet licensing requirements established. Restrictions should be imposed on corporation license-holders which will eliminate the opportunity for corporations to avoid licensing requirements by simply reincorporating. For instance, such restrictions might prohibit reincorporation for a license involving the same officers, directors or stockholders of any corporation which had lost a license or had been in violation of liquor control regulations.

Why recommendation was made — Consistency in terms of licensing requirements among on-premise establishments in wet and dry counties will enhance simplicity and fairness and avoid artificial, difficult to enforce, distinctions. The one-year residency requirement enables the ABC to check potential licensees for criminal records and other background information, yet, it is not so long as to unduly restrict entrance into the business. The current problem of clubs reincorporating to avoid licensing requirements, penalties and payment of delinquent taxes, is a problem the Legislature should remedy.

Liquor Establishments

Recommendation — Liquor-by-the-drink counties (wet counties) should have a system of on-premise sales licenses which include liquor-by-the-drink establishments, class A private clubs, and class B private clubs. The liquor-by-the-drink establishments will be required to maintain 30% of their gross sales in food (unless this requirement is repealed by a county) and will be open to the general public. Class A private clubs should consist of private restaurants and drinking facilities for non-profit associations such as VFW's, American Legions, town clubs, and country clubs. There should be no minimum food sales requirements for class A clubs, and their membership should be controlled by their own organizational by-laws. Class B private clubs should consist of for-profit private restaurants and drinking facilities desiring to limit access to the general public. There should be no minimum food sales requirement for class B clubs. Class B clubs should be required to charge an annual membership fee with all such fees being paid to the State except for a portion allocated to the private club for administrative costs of collecting the fee.

Counties rejecting liquor-by-the-drink (dry counties) should have a system of on-premise sales licenses which include class A and class B private clubs. The class A and class B private clubs should operate identically to those in wet counties, i.e., as non-profit and for-profit limited access facilities, respectively. Again, the membership fee from the class B facilities should flow to the State except for the allocation of administrative costs to the club.

Reciprocal arrangements should be allowed among class A private clubs operating as country clubs and town clubs whether they are located in wet or dry counties. Reciprocal agreements should be in writing and filed with the ABC. A fee should be charged for each such agreement to cover administrative costs of the ABC.

Reciprocity among various chapters or clubs of the same fraternal organization should be governed by the organization's by-laws.

No reciprocal arrangements should be allowed among class B private clubs regardless of whether they are located in wet or dry counties. Such clubs should be limited to use by members and guests only. No guests of management should be allowed admittance, and no public seating should be allowed within licensed facilities. Members should be required to apply for membership on a State-required form, pay a membership fee established by the State to be paid to the State, and wait ten (10) days to receive membership cards which are good for one year. Renewal and payment of membership fee should be required annually.

Why recommendation was made — The serving of liquor-by-the-drink to the general public should be limited to liquor-by-the-drink establishments. Hence, reciprocal agreements and guests of management should be eliminated for class B (for profit) private clubs. A fee should be charged for reciprocal agreements (among class A private clubs) in order to cover administrative costs. Membership fees, less a handling fee, should also be required to be paid to the ABC for the same reason.

CMB Establishments

Recommendation — The on-premise sale and consumption of CMB should continue to be licensed by the local unit of government in both wet and dry counties; however, a system in which licenses would be reviewed and approved by the ABC before being issued by local authorities should be implemented. CMB could be sold at liquor-by-the-drink establishments, private clubs, or at CMB-only establishments as long as the separate, locally-issued and ABC-approved license is obtained.

Why recommendation was made — The recommendation would maintain the system for CMB but with State control.

Caterer License

Recommendation — A category of licenses to be designated as a caterer license should be established. This license would be issued to a duly qualified individual, partnership, or corporation, regularly engaged in the catering business. It is envisioned that a caterer, properly licensed, could cater food and liquor for special events on otherwise non-licensed premises located within wet counties. The caterer should be responsible for assuring compliance with liquor control regulations. Caterers would be allowed to serve liquor-by-the-drink to attendees of the special event. Caterers would be permitted to purchase alcoholic products from wholesalers or liquor retailers.

Why recommendation was made — The recommendation provides an avenue for the use of non-licensed premises for special events in wet counties without the requirement to obtain a temporary permit license in advance. It also provides for proper liquor control, thus limiting the potential for abuse.

Temporary Permit License

Recommendation — A category of licenses to be designated as temporary permits should be established. This license, which would allow for the serving of liquor-by-the-drink, would be issued to a duly qualified individual or organization in a wet county wishing to sponsor a special event on non-licensed premises without the services of a caterer. Such temporary permit license would be granted only upon prior application to the ABC. The application would specify the precise premises of the event, the sponsoring individual or organization, and the date(s) and time(s) of the event. A temporary permit would be issued for a specific length of time, corresponding with the special event, and would not exceed a time period of seven days. The temporary permit licensee would be responsible for assuring compliance of the liquor control regulations. The temporary permit licensee would be required to purchase all alcoholic liquor products at a retail liquor store.

Why recommendation was made — The recommendation is intended to facilitate implementation of the constitutional amendment provisions authorizing sales of liquor-by-the-drink in public places to which a temporary permit has been issued. It provides an avenue for the use of non-licensed premises for special events in wet counties. It also provides for proper liquor control, thus limiting the potential for abuse.

Alcoholic Beverage Handler Training and Licensing

Recommendation — Anyone who is affiliated with on-premise sales establishments, including private clubs, liquor-by-the-drink establishments, or beer establishments, and who may be in a position to serve or handle alcoholic beverages should be required to register with the Alcoholic Beverage Control and pay a fee to be licensed as an alcoholic beverage handler. No person should be permitted to handle alcoholic beverages as an alcoholic beverage server, waitress, waiter or busboy unless they are at least 18 years of age and free from any criminal conviction. Bartenders and mixing personnel should likewise be free from criminal convictions, should be at least 21 years of age, and also be registered with and licensed by the ABC.

Anyone handling or serving alcoholic beverages or bartending at an on-premise sales establishment should successfully complete a State mandated and supervised training program regarding the State liquor system, the identification and handling of customers under the influence, and the identification of underage customers. It is envisioned that the training programs would be offered by public and private groups, but that all such programs would be certified and monitored by the State. Certification of completion would be necessary before such persons could be registered with the State. The registered alcoholic beverage handler as well as the on-premise establishment license holder should be responsible for liquor law violations.

Why recommendation was made — By establishing standards and practices for responsible alcohol service, the program should help reduce the incidence of drinking and driving, the sale of alcohol to minors, and other abuses and violations of the alcoholic beverage control laws. The program will enhance professionalism within the alcoholic beverage industry and give the industry an opportunity to communicate a concern for public health and safety. It should favorably affect the availability and cost of liquor liability insurance which has recently increased at rapid rates.

Sunday and Election Day Sales

Recommendation — Sales and consumption of alcoholic beverages and CMB should be permitted on Sundays and election days in all types of on-premise establishments. Note: Senate Bill 128, passed by the 1985 Legislature, prohibits election day sales of liquor for on-premise consumption during polling hours effective July 1, 1987.

Why recommendation was made — The recommendation establishes consistency among on-premise establishments. Currently, only private clubs can sell alcoholic beverages on Sundays.

Promotional Activities

Recommendation — Regulations governing advertising and promotions should be devised so as to allow restaurants and clubs to promote their presence in the community without promoting excessive consumption of alcoholic beverages. Happy Hours should continue to be banned by the prohibition of liquor sales for less than cost. The requirement that prices for drinks be maintained on a daily basis should be continued. Contests offering free drinks should be prohibited although promotions involving food and prizes unassociated with liquor or liquor consumption could be allowed on a carefully controlled basis.

Why recommendation was made — The recommendation will inhibit the promotion of excessive drinking without unduly restricting the ability of businesses to promote their presence.

RECOMMENDATIONS CONCERNING OFF-PREMISE ESTABLISHMENTS

State Stamp and Review System for CMB Outlets

Recommendation — Local licensing of CMB outlets should be maintained. However, a system in which licenses would be reviewed and approved by the ABC before being issued by local authorities should be implemented.

Why recommendation was made — A State stamp and review system would provide the ABC with a master list of all alcoholic beverage licensees. It would also give the ABC the ability to conduct background checks and references for conviction records of license candidates. Statutes concerning licensing requirements are sometimes ignored at the local level. Under this system, the ABC would check for criminal records and DUI convictions of potential CMB licensees while local authorities would check the “character” requirements. It would also recover some of the enforcement costs of policing CMB establishments.

Residency Requirements

Recommendation — The county residency requirement for all retail liquor dealers and CMB operators should be eliminated. The State residency requirement for CMB operators should remain at one year. The State residency requirement for retail liquor dealers should remain at four years.

Why recommendation was made — The county residency requirement is not useful to the ABC for enforcement purposes. It also disqualifies some individuals in cities and metropolitan areas from owning a store in another part of town. The one-year State residency requirement for CMB operators was maintained to ensure that the applicant had established sufficient presence in the State to allow the ABC to conduct effective background checks. The State residency requirement of four years for retail liquor dealers not only ensures enough time for background checks, but provides for stability within the industry. Persons who have resided in the State for a period of time are more likely to be concerned with the welfare of the community and State.

Convicted Felon’s Eligibility for License

Recommendation — Any convicted felon should be prohibited from obtaining (or continuing to hold) a retail liquor or CMB license. The exception in K.S.A. 41-311-a-2 should be eliminated.

Why recommendation was made — The exception, which applies to felons who were convicted more than nine years prior to license application for a non-violent federal offense and sentenced to probation only, serves no useful purpose.

Limit on Number of Liquor Retailers

Recommendation — There should be no limit placed on the number of CMB or retail liquor licenses issued.

Why recommendation was made — The economics of the liquor industry should determine the “appropriate” number of retail liquor stores or other establishments. Limiting the number of licenses would create an artificial value on owning licenses and would also lead to implementation problems.

Corporate Ownership of Retail Liquor Stores

Recommendation — Corporate ownership of retail liquor stores should continue to be prohibited.

Why recommendation was made — Allowing corporate ownership would create enforcement and accountability problems. Other states have experienced problems with corporate ownership, and the turnover rate could cause tax collection problems. Allowing only individual ownership enhances community awareness on the part of licensees.

Multiple Ownership of Retail Liquor Stores

Recommendation — The prohibition on multiple ownership of retail liquor stores and on owning more than one retail liquor license should be maintained.

Why recommendation was made — Multiple ownership and ownership of more than one retail liquor store would impede competition with the potential of one licensee capturing a large share of the market. Allowing chains would also encourage illegal inter-store exchanges of products to replenish shortages.

Establishments Other Than Retail Liquor Stores Selling Liquor

Recommendation — Sale of liquor (including distilled spirits, wine and strong beer) for off-premise consumption should continue to be restricted to retail liquor stores.

Why recommendation was made — Allowing other establishments to sell liquor could result in an increase in purchases by underage individuals. It would more than triple the number of premises which ABC would have to police. It is felt that persons whose sale or primary source of income is the sale of alcoholic beverages are more concerned with potential sanctions against their license for violating beverage laws.

Sale of Non-Liquor Products at Retail Liquor Stores

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Recommendation — Retail liquor stores should be permitted to sell lottery tickets, mixes and drink-related items in addition to liquor.

Why recommendation was made — Permitting retail liquor stores to sell drink-related items would give the retailer an opportunity to enhance its products without the need for a “party shop”. Customers would no longer need to make an extra trip to another store to pick up drink-related items to go with liquor purchases.

Minimum Price Markup

Recommendation — The minimum percentage markup system should be repealed as of July 1, 1988. Selling below acquisition cost should be prohibited.

Why recommendation was made — The minimum price markup system discourages competition and rewards economic inefficiencies, thus resulting in a “surplus” number of liquor retail outlets. Dr. Darwin Daicoff’s study indicates that Kansas, on a per capita basis, has nearly twice as many licensed retail liquor stores as the national average.

Kansas is one of only three states that apply a minimum price to liquor. The percentage markups in Kansas are approximately twice the size of those in New York and Wisconsin. Kansas’ retail liquor prices are relatively high when compared with other states.

It is an impossible task for the ABC Board of Review to set prices that are fair and reasonable to the consumer, do not unduly stimulate the consumption of alcoholic beverages, and result in a reasonable profit for retailers, all at the same time. Yet, this is what is required in current law.

Price and Brand Advertising

Recommendation — The prohibitions on price and brand advertising should be repealed as of July 1, 1988.

Why recommendation was made — If prices are no longer controlled, it seems logical to allow retailers to advertise their prices. Kansas’ limitations on advertising are among the most restrictive in the nation. It is not felt that advertising will stimulate excessive consumption. It will, however, provide information to the consumer and promote competition. It will better enable retailers along the border to compete with out-of-state retailers.

Use of Credit Cards for Purchase at Retail Liquor Stores

Recommendation — Liquor retailers should be allowed to accept credit cards from customers.

Why recommendation was made — Allowing customers to use credit cards enhances convenience and modernizes a long-standing restrictive law. Payment by credit card is more reliable than by check and is not seen as a stimulant to consumption.

Point-of-Sale Merchandise

Recommendation — The Bureau of Alcohol, Tobacco and Firearms (BATF) guidelines concerning point-of-sale and product displays should be adopted for the sale of CMB and liquor.

Why recommendation was made — The BATF has rules which specifically deal with point-of-sale merchandising. The guidelines set per brand limits on premium items (those with secondary value) which may be offered to retailers. They also prohibit inducements and tie-ins. BATF polices transfers of point-of-sale materials at the manufacturer's level. Adopting BATF guidelines will give the industry one set of rules to follow and avoid duplication and inconsistencies.

Restrictions on the Solicitation of Business

Recommendations — (1) Present law prohibiting the placing of objects on or within any window of retail liquor premises so as to obstruct vision from the exterior to the interior of the premises should be maintained. (2) Current law prohibiting the display of point-of-sale materials, posters or other placards within three feet of any window facing a street or sidewalk should be repealed. (3) The prohibition on the use of Christmas lights to outline windows from the outside or inside of retail liquor premises should be eliminated. (4) Retail liquor licensees should be allowed more than one sign on their establishments. (5) The Director of the ABC should be given specific authority to establish rules and regulations concerning licensed liquor retail store signs. (6) The regulation prohibiting blinking lights except during the Christmas season should be repealed. (7) The prohibition on billboard advertising should be extended to include CMB as well as strong beer, wine and spirits. (8) Retail liquor dealers should continue to be prohibited from advertising on billboards. (9) The use of handbills and fliers by liquor retailers should continue to be prohibited. (10) Advertising on the outside of retail liquor buildings should continue to be prohibited. (11) Using photographs of business premises in advertisements should be permitted.

Why recommendations were made — Recommendations to modify current law and regulation were based on the perceived relationship between the regulation and the public health, safety or welfare. The restrictions that serve to protect public health, safety or welfare were maintained or extended, while those which did not protect the health, safety and welfare of the public were repealed or modified.

Election Day Sales

Recommendation — The prohibition on off-premise sales of wine, beer, and distilled spirits on election days should be eliminated. Note: Senate Bill 128, passed by the 1985 Legislature, prohibits election day sales of liquor for on-premise consumption during polling hours effective July 1, 1987.

Why recommendation was made — The prohibition of off-premise sales while the election polls are open is an outdated concept which was enacted when many taverns were used as polling places.

RECOMMENDATIONS CONCERNING WHOLESALERS & SUPPLIERS

Residency Requirements

Recommendation — The State residency requirement should be five years for beer, wine, and spirits wholesale licenses. Residency within the State should be required during continuation of business.

Why recommendation was made — The recommendation establishes consistency among the wholesale licenses and provides for stability. Five years is ample time to prevent outside criminal elements from entering the State's alcoholic beverage industry and helps ensure social awareness on the part of wholesalers.

Other Licensing Requirements for Suppliers

Recommendation — (1) A one-time filing fee of \$25 should be established on the privilege of suppliers doing business in Kansas. This would become an on-going permit. (2) The Director of the ABC should have the ability to issue a temporary permit for a supplier or an in-state importer to ship particular brands of products into the State for trade shows and samplings. These products, which are not to be offered for resale, should be processed through a licensed Kansas wholesaler. (3) A supplier shipping products into the State should have an appointed resident agent.

Why recommendation was made — Requiring supplier permits allows the Director some leverage against a supplier who violates Kansas' alcoholic beverage laws. The fee would enable the ABC to recover the cost of processing permits.

Other Licensing Requirements for Wholesalers

Recommendation — (1) There should be three types of wholesaler licenses issued by the state: Distilled Spirits, Beer and Wine. (2) These licenses should function either separately or in combination within the same physical setting. (3) Separate operations should require separate licensing. (4) Licensed operations should have the ability to handle non-alcoholic products and services. (5) Corporations, partnerships and sole proprietorships should all continue to be permitted at the wholesale level. (6) Wholesalers, who should be licensed on an annual basis, should be required to hold a written franchise agreement by products and suppliers for given territories. (7) Felony and moral convictions should disqualify a current or potential license holder. (8) DUI convictions of wholesale license holders should be grounds for revocation or suspension of the wholesaler license at the discretion of the Director. (9) All stockholders in a corporation holding a wholesaler license should be subject to the same terms and conditions as the principal licensee. (10) The disqualification on grounds of a felony or morals conviction should apply only to an individual and not to a corporation.

Why recommendation was made — Establishing three licenses rather than the current two (liquor and beer) simplifies the understanding of State law, particularly with the recent allowance of beer wholesalers to distribute wine. The establishment of three licenses allows for combined operations within the same house, thus making for a more efficient operation. The recommendation gives the Director some flexibility in dealing with DUI cases.

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Employee Licensing

Recommendation — (1) Wholesaler sales personnel, who must be at least 21 years of age, should continue to be licensed on an annual basis with a \$25 fee. (2) Non-sales personnel should not be required to be licensed and can be under 21. (3) Convictions for morals violations should preclude a person from being licensed, but the Director of ABC should have discretionary authority to deny or revoke a license for felony and alcohol violations. (4) Licensed personnel should be prohibited from employment in other tiers of the industry. (5) A licensee's spouse should be able to be employed in other tiers of the industry except in a position of management.

Why recommendation was made — The \$25 fee would cover administrative costs of processing sales personnel licenses. The remainder of the recommendation provides reasonable safety guards and requirements for wholesaler personnel.

Gallonage Tax Payments

Recommendation — (1) Wholesalers should be responsible for the collection and payment of the state gallonage taxes on all alcoholic products handled. These taxes should be paid by the 15th of the following month. (2) Wholesalers should continue to be required to furnish a bond in the form of a CD, stock, or surety bond to the State to ensure the payment of gallonage taxes. (3) Local units of government should be prohibited from levying alcohol taxes on wholesalerships unless such tax is applied to wholesalers of every type of business.

Why recommendation was made — Currently, wine and spirits wholesalers are responsible for remitting gallonage taxes, while beer wholesalers pay the tax to the supplier who in turn remits it to the State. Requiring all wholesalers to submit gallonage taxes to the State would eliminate the beer supplier's ability to draw interest on the State tax before remitting it to Kansas. It would, rather, enable Kansas wholesalers to hold the money. Local units of government should be prohibited from discriminately imposing taxes on an entity simply because it is in the business of selling alcohol.

Micro Breweries

Recommendation — In the interest of economic development, the Commission recommends the Legislature provide a framework for the establishment and operation of micro breweries. This framework should be similar to that established for farm wineries.

Why recommendation was made — The recommendation is consistent with the current emphasis on economic development.

Supplier Beneficial Interest

Recommendation — Suppliers should not be permitted to own an interest in wholesale or retail operations in Kansas. This includes wholesale and retail facilities, equipment, furnishings, fixtures, buildings, land, etc. Suppliers should, however, be permitted to have a stock portfolio interest, not to exceed 5%, in a retail establishment.

Why recommendation was made — Prohibiting a portfolio interest is burdensome and difficult to enforce. Therefore, some de minimus rule seems appropriate. Other prohibitions against ownership interests are necessary to prevent “tied houses” and preserve competition in the industry.

Wholesaler Beneficial Interest

Recommendation — (1) A wholesaler should continue to be prohibited from directly or indirectly owning any portion of an alcoholic beverage retail operation or any portion of premises where alcoholic products are sold at retail in Kansas. (2) A wholesaler should be prohibited from making loans to any retailer or retail operation and from furnishing, lending, leasing or supplying equipment or other items of value except as provided for point-of-sale merchandise. (3) A stock portfolio interest, not to exceed 5%, on the part of a wholesaler in a retail establishment or supplier operation should be allowed. Such wholesaler should be required to disclose the interest at the time of acquisition and continue updates annually.

Why recommendation was made — The recommendation continues a policy of preventing wholesalers from obtaining or holding a beneficial interest in retail establishments. It allows for a portfolio interest by a wholesaler, because prohibiting a portfolio interest is burdensome and difficult to enforce.

Supplier Ability to Do Business in Kansas

Recommendation — (1) Manufacturers, suppliers and in-state importers should be licensed by the State, and licenses should be subject to suspension, fine and revocation for violation of state laws. (2) A manufacturer’s license should continue to allow the manufacture, but not distribution, of alcoholic liquor and beer. (3) Distribution of products should continue to flow through a licensed, franchised wholesaler in an assigned territory. (4) In-state importers should continue to be subject to the same requirements as manufacturers and suppliers with an exception made for distribution. An in-state importer should be allowed to distribute products to the entire State and not be restricted to a defined territory. (5) All suppliers should continue to be considered brand owners and, as such, must submit brands and packages for pre-approval by the ABC. The packages should meet BATF regulations.

Why recommendation was made — The recommendation maintains present requirements and provides flexibility for in-state importers in the marketing of products. Packaging and labelling requirements would be brought into line with BATF requirements which prevents duplication and inconsistencies in regulations.

Franchise Agreements

Recommendation — Present provisions governing termination of wine and spirits franchises should be required for termination of beer franchise agreements. A wholesaler should be given 30 days from the time of the notice of termination, which must provide a reasonable cause for the termination, to remedy any deficiencies or file legal action. Products would continue to flow through the wholesaler during this period. A procedure to allow immediate termination in cases of fraud, insolvency, etc., should be made.

Why recommendation was made — The recommendation brings franchise agreement laws for beer wholesalers into line with wine and spirits wholesalers and provides some protection against arbitrary termination by a supplier.

Product Containers and Sizes

Recommendation — Suppliers should continue to be required to receive prior approval from the ABC Director for all brands, labels, and sizes.

Why recommendation was made — The Director should maintain the ability to control product sizes and containers.

Supplier and Wholesaler Employee Activities

Recommendation — (SUPPLIER) (1) Supplier personnel operating in field marketing in Kansas should be required by law to hold a valid State permit. The fee for the permit should be \$25 per year. (2) Supplier personnel should have the ability to make retail calls and to participate in promotional activities with industry members. Supplier personnel should also be able, with a retailer's permission, to handle merchandise at retail. (WHOLESALE) (1) Wholesale personnel should be able to make sales calls to both on-premise and off-premise retailers and to handle their own merchandise at retail. They should not, however, be able to mark retail prices. (2) Wholesale personnel should have the ability to participate in promotional activities and to conduct marketing activities at retail. (3) Wholesale personnel should be prohibited from implementing or participating in incentive programs at the retail level.

Why recommendation was made — The recommendation would give supplier personnel more freedom in working with retailers. It would give private clubs an equal opportunity to receive sales calls from wholesalers. Merchandising and marketing programs that are currently prohibited today could be offered.

Seminars and Samplings

Recommendation — (SUPPLIERS) (1) A supplier should be able to furnish training materials at the wholesale and retail levels. (2) Participation in wholesale and retail training by a supplier should be permitted. (3) A supplier should be permitted to furnish personnel, materials, and products for industry functions. (4) Suppliers should be permitted to conduct samplings for industry personnel at an on-premise retail location, at a wholesaler-ship or at an independent location, but not at an off-premise retail outlet. (WHOLESALE) (1) Wholesalers should be permitted to conduct retailer programs at a retail outlet (on- or off-premises), at wholesale premises, or at an independent location. (2) The ABC Director should be notified before such a program can be conducted.

Why recommendation was made — The recommendation broadens and clarifies a supplier's role in conducting seminars and samplings. It also provides the opportunity for marketing and training programs by a wholesaler.

House-Controlled Brands

Recommendation — All brands should be offered to all licensed retailers in a franchised territory, thereby eliminating house-controlled brands.

Why recommendation was made — The use of house-controlled brands at retail is unfair to other retailers in a wholesaler's territory.

Transportation of Products From Suppliers

Recommendation — (1) A supplier should be required to ship products to a wholesaler via a carrier chosen by the wholesaler and with the cost charged to the wholesaler. (2) The requirement that products come to rest (delivered/unloaded) at the wholesale operation should remain in place. (3) Carriers should continue to be subject to ABC permit requirements. (4) The requirement that vehicles be bonded should be eliminated. (5) A wholesaler should be required to service all licensed retailers in a franchised territory who desire to purchase and are in good standing. (6) A wholesaler should be able to utilize company vehicles or common carriers for delivery products. (7) A wholesaler should have the ability to service a retailer or an authorized agent at the wholesaler premises. (8) A wholesaler should be prohibited from selling or delivering to a consumer. (9) A wholesaler should be prohibited from furnishing, loaning, or leasing delivery equipment to a retailer. (10) A retailer should be prohibited from buying a product from a wholesaler other than the wholesaler assigned to the geographic territory of the retailer unless a product is unavailable within the territory. Such purchases should require the ABC Director's approval. (11) A retailer should not be permitted to sell or transfer products from one retail location to another in multiple operation. (12) A wholesaler should be prohibited from selling equipment to a retailer at a price less than cost. (13) A wholesaler should be permitted to transfer products to or sell to another wholesaler. (14) A wholesaler should be permitted to deliver to a retailer beginning at 7 a.m.

Why recommendation was made — The Commission sees no worthwhile reason for continuing to require the bonding of vehicles. Permitting deliveries at 7 a.m. rather than the current 8 a.m. would provide the parties with more flexibility.

Maintenance of Records

Recommendation — Wholesalers should continue to be required to keep records of sales to retailers (by retailer) and to report total monthly receipts by supplier, brands and packages, as well as total sales to retailers and breakage.

Why recommendation was made — The recommendation continues to provide the ABC with information necessary to track products and ensure compliance with the law.

Sales on Credit

Recommendation — (SUPPLIERS) — Any system of extension of credit should be acceptable provided that BATF regulations are not violated. (WHOLESALE) (1) Sales of all products from wholesale to liquor retail

should be on C.O.D. basis. (2) Sales to each licensed retail operation should be conducted as a separate transaction, even if the sale is to a multiple operation. (3) All modern financial instruments, except second party checks, should be allowed for payment. (4) Prepayment plans should be accepted provided that the amount does not exceed normal period acquisitions. (5) A wholesaler should be required to notify the Director when a bad check is received. The Director should have discretion to place the liquor retailer on a cash basis. (6) Sales to retailers should be considered final with no consignments. Product buy-back provisions should apply only to retail closings and only to sellable products with ABC approval. This does not preclude a wholesaler from reacquiring the product when required by the supplier. (7) The wholesaler should be responsible for damaged or defective products or a shortage of products up to 24 hours after delivery. After 24 hours, the retailer should be responsible.

Why recommendation was made — The recommendation has the potential to improve the working relationship between the supplier and the wholesaler. Allowing the acceptance of debit cards at the wholesale level modernizes transactions without subjecting wholesalers to unnecessary risks in terms of collection. Purchase transactions, damage, and quality control requirements are clarified.

Point-of-Sale Materials and Product Display

Recommendation — Point-of-sale regulations should be set to coincide with Bureau of Alcohol, Tobacco and Firearms (BATF) regulations.

Why recommendation was made — Adoption of BATF guidelines would simplify a cumbersome system and avoid duplicative, inconsistent regulations.

Sales to the Military

Recommendation — (1) All purchases made by military installations in Kansas should be required to be made through the Kansas wholesaler assigned to the base's geographic territory. (2) No state gallonage tax should apply to such purchasers. (3) The military should be prohibited from transferring alcoholic beverage products from one installation to another.

Why recommendation was made — The recommendation is an attempt to keep business in Kansas.

Supplier & Wholesaler Advertising

Recommendation — (1) A supplier should have the option of advertising in all media, except billboards, as long as the medium accepts the advertising. (2) Rebate premium programs (from supplier to consumer) should be available. (3) Suppliers should have the ability to cooperatively advertise with wholesalers. (4) Wholesalers should be allowed to cooperate with suppliers in advertising. (5) Wholesalers should be permitted to advertise in all media except billboards. (6) Wholesalers should continue to be prohibited from cooperative advertising with retailers. (7) Wholesalers should be prohibited from participating in rebate and premium programs at any level. (8) Wholesalers should have the ability to decorate vehicles with company decals.

Why recommendation was made — Removing the restriction on cooperative advertising will give suppliers and wholesalers more flexibility in marketing products.

Uniform FOB & Billing

Recommendation — A uniform FOB price for all shipments of a particular product into Kansas should continue to be required for all alcoholic beverage products (spirits, wine and beer). (2) All beer products should be billed to the wholesaler to include federal excise taxes. State gallonage taxes for beer should be paid by the wholesaler.

Why recommendation was made — Requiring uniform FOB pricing for the entire State prevents discriminatory treatment. The recommendation shifts the actual payment of gallonage taxes on beer to the wholesaler, thus establishing consistency with the payment of gallonage taxes on other alcoholic beverages.

BATF Regulations & Uniform Prices

Recommendation — The pricing of products should coincide with BATF regulations concerning tied house rules. Wholesalers should continue to be required to sell at uniform prices to each licensed retailer in a franchised territory (military excluded). The only difference in price offered to the military should be the amount of the state gallonage tax.

Why recommendation was made — The recommendation prevents discriminatory pricing on the part of a wholesaler.

Selling Below Cost

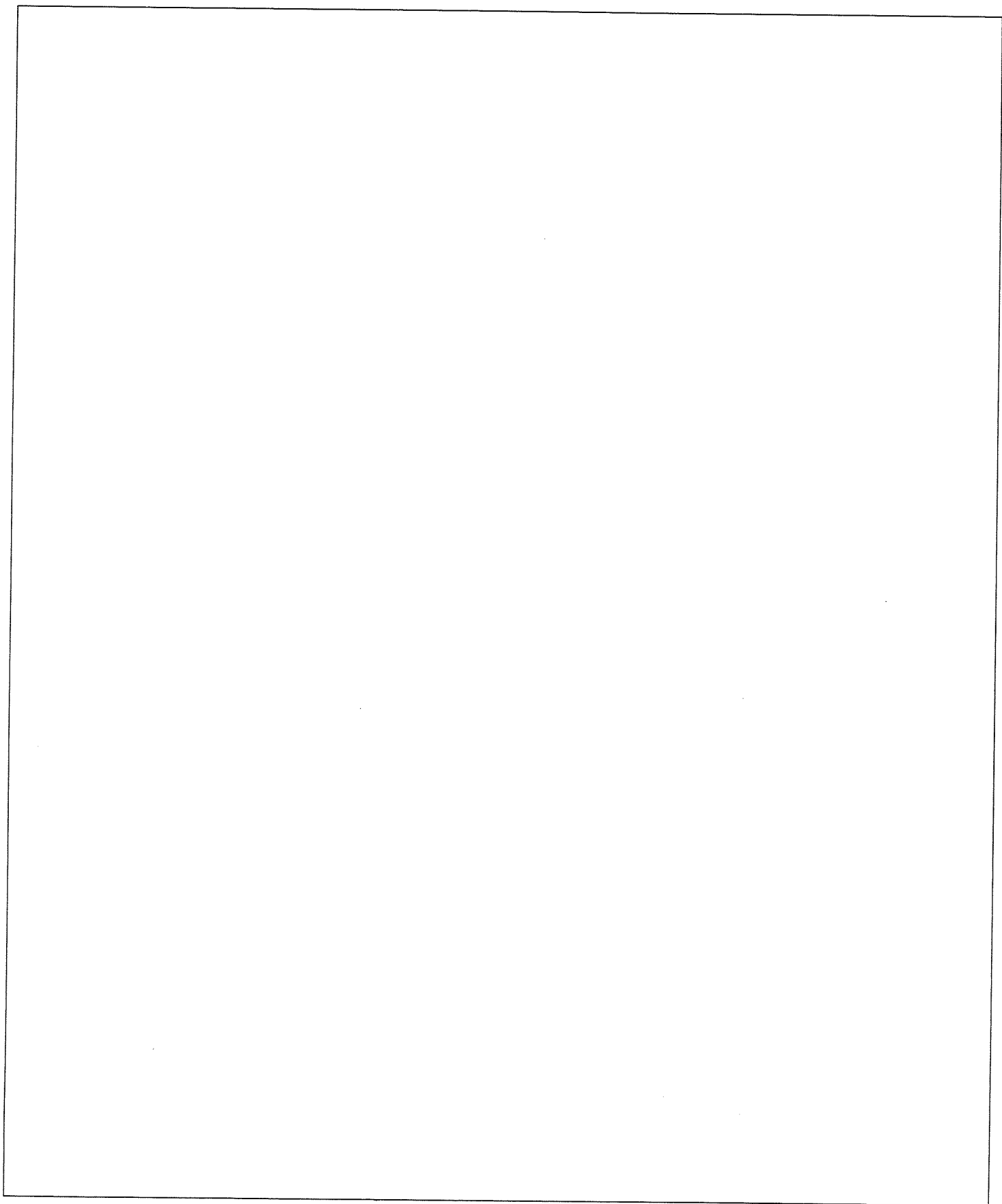
Recommendation — Selling below acquisition costs should be prohibited except when a wholesaler is closing out a product. Wholesalers should be prohibited from handling the product they intend to discontinue for one year from the date of ABC notification of the reduced price.

Why recommendation was made — The prohibition on the selling below acquisition costs promotes market stability and prevents price wars at the wholesale level. The recommendation allows wholesalers a vehicle in closing out a product and ensures that wholesalers do not abuse close-out pricing.

Case Discounts

Recommendation — Discounts on products should begin with the first case or unit count, and the discount should be required to be offered to all retail licensees in a franchised territory. Regular and discount sales should be required to be offered to all retailers until the specific product is depleted or promotion date expires.

Why recommendation was made — The recommendation prohibits discriminatory pricing when discounts are offered to retailers.



Appendix A
Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content

RESULTS OF EXAMINATION
by K.B.I. LAB

% ETHANOL (Alcohol)
BY WEIGHT

1 - One 12 oz. can Bud Light (strong)	3.5
2 - One 12 oz. can Bud Light (3.2)	2.8
3 - One 12 oz. can Busch (strong)	3.9
4 - One 12 oz. can Busch (3.2)	3.2
5 - One 12 oz. can Budweiser (strong)	3.9
6 - One 12 oz. can Budweiser (3.2)	3.1
7 - One 12 oz. can Coors (strong)	3.8
8 - One 12 oz. can Coors (3.2)	3.2
9 - One 12 oz. bottle Miller (strong)	3.8
10 - One 12 oz. bottle Miller (3.2)	3.1
11 - One 12 oz. bottle Michelob (strong)	4.1
12 - One 12 oz. bottle Michelob (3.2)	3.2
13 - One 12 oz. can Old Milwaukee (strong)	3.9
14 - One 12 oz. bottle Wiedemann (strong)	3.7
15 - One 16 oz. can Colt 45 (strong)	4.1
16 - One 12 oz. bottle Corona (Mexican, strong)	3.6
17 - One 7 oz. bottle Little King (3.2)	3.2

K.S.A. 41-102 (C) defines "beer" when its meaning is not enlarged, modified, or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

K.S.A. 41-2701 (a) defines "Cereal Malt Beverage" as any fermented but undistilled liquor brewed or made from malt or 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.

Appendix B
Commission Public Hearings

Public hearings were held to solicit public input on the Commission's work. The Commission held hearings in Salina on June 20, Topeka on June 25, Wichita on June 27, and Overland Park on June 30.

The following individuals provided oral testimony at the public hearings:

Salina — John Chlumsky, Chlumsky Liquor; Sherry Almquist, Salina School Team Training; Cassy Thompson, Salina Central High School student; Callie Denton, Salina South High School student; Annette Radiel, Salina South High School student; Jan LeMaster, Salina Citizens Coalition on Drug & Alcohol Abuse; Carl Mitchell, Kansas Retail Liquor Dealers Association; Marti Martin, Brookville Hotel; George Puckett, Kansas Restaurant Association; David Martin, Martin Liquor; Max E. Wolf; James Talley, Salina South High School student; Ann Gafford, Salina Citizens Coalition on Drug & Alcohol Abuse; Clay Thompson, Salina Central High School Principal; Mike Shample; Mark Murray; Wanda Bartlett, Dighton.

Topeka — Rev. Richard Taylor, Kansans For Life At Its Best; Joe Berger, Sunflower Club Association; Lyle Ereas, Sunflower Club Association; D. E. Godfrey, Topeka Youth Project; Francis Wood, Kansans For Life At Its Best; Teresa L. Lewis, Shawnee County Community Assistance & Action Satellite Program on Alcohol & Drug Abuse; Cindy Haugh, Topeka Youth Project; John Webb, Green's Liquor; Albert D. Lollar, Kansas Retail Liquor Dealers Association; Shirley Fleener, Little Apple Task Force on Drug & Alcohol Abuse; Frances Kastner, Kansas Food Dealers Association; Verd Holsteen, Kansas Association of Evangelicals.

Wichita — Glen Davis, Wichita Public Schools; John V. Glades; Herb Cohlma, liquor retailer; John Webb, Green's Liquor; Bernice Hutcherson, Wichita ADAB; Norma Regier, Kansans For Life At Its Best; John L. Ziulkowski; Robert L. Morhed; Nickie Soice, Drug & Alcohol Abuse Prevention Center; Don R. Arnold, St. Joseph Medical Center; Tom Christianson; Arnold Sollars, Moose Lodge No. 138; Carl Mitchell, Kansas Retail Liquor Dealers Association; George Puckett, Kansas Restaurant Association.

Overland Park — Pat Venneman, Shawnee Mission Schools; Sherry Wood, Drug & Alcohol Council; Kathy Champlin, United Community Services; Neal Whitaker, Kansas Beer Wholesalers Association; Atha Webster Gay, Shawnee Mission Schools Alcohol & Drug Education and Prevention; John D. Knight, Hartegan Liquor; John Peterson, Anheuser Busch; Tuck Duncan, Kansas Wine & Spirits Wholesalers Association; Betty Weimers, Kansans For Life At Its Best; John McCabe, Citizens Advisory Commission; Kathie Champlin, United Community Services; Gary J. Browillette, Quik Trip; John Webb, Green's Liquor.

GLOSSARY

***ABC** — See “Alcoholic Beverage Control”.

***Alcoholic Beverage Control (ABC)** — Department of Revenue division responsible for administering and enforcing the laws relating to the manufacture, transportation, distribution, sale, possession and traffic of alcoholic beverages within the State.

***Alcoholic Beverage Control Board of Review** — a 3-member Governor-appointed regulatory review board responsible for establishing retail liquor price markup percentages, approving regulations relating to liquor and private club activities, and hearing appeals of decisions made by the Director of the ABC.

***Alcoholic Beverage Control Director** — administrative head of the ABC who is appointed by the Secretary of Revenue and responsible for regulating the manufacture, transportation, distribution, sale, possession and traffic of alcoholic beverages within the State.

***All-Strength Beer** — term used to denote “beer” if the present distinction between cereal malt beverage (beer containing not more than 3.2 percent alcohol by weight) and strong beer (beer containing more than 3.2 percent alcohol by weight) is eliminated.

***Bureau of Alcohol, Tobacco & Firearms (BATF)** — a U.S. Department of Treasury division responsible for enforcing federal laws and regulations concerning alcoholic beverages; the BATF sets standards for product size, content labeling and advertising, and prohibits certain business practices.

***Cereal Malt Beverage (CMB)** — beer which contains not more than 3.2 percent alcohol by weight.

***CMB** — see “Cereal Malt Beverage”.

***Director** — see “Alcoholic Beverage Control Director”.

***Drink tax** — see “Private Club Liquor Tax”.

***Dry county** — a county in which the liquor-by-the-drink Constitutional Amendment was defeated in the November 1986 or any subsequent general election.

***Enforcement tax** — an 8 percent retail-level sales tax based on the gross receipts from the sale of liquor; this tax, which is in lieu of the State’s retail sales tax, applies to strong beer, wine and spirits sold in retail liquor stores.

***Excise tax** — see “Private Club Liquor Tax”.

***Exclusive franchise system** — authorizes franchise agreements giving one wholesaler the exclusive right to distribute a supplier’s particular brand or brands in a specific geographic area.

***Gallonage tax** — a wholesale-level tax based on the quantity of alcoholic beverages manufactured, used, sold, stored or purchased in Kansas; the tax, which is applied at various rates for wine, spirits, strong beer and cereal malt beverage, is paid once by the first receiver of the product in Kansas. The tax on beer product is paid to the brewer who submits it to the state.

Gallonage tax rates:

CMB:	\$0.18 per gallon
Strong beer:	\$0.18 per gallon
Wine less than 14% alcohol:	\$0.30 per gallon
Wine more than 14% alcohol:	\$0.75 per gallon
Spirits:	\$2.50 per gallon

***House-controlled brands** — brands of liquor distributed by a wholesaler to only one retailer within a franchise territory.

***Liquor** — encompasses all alcoholic beverages excluding cereal malt beverage; includes strong beer, wine and spirits.

***Liquor-by-the-drink Amendment** — Constitutional amendment permitting the sale of liquor-by-the-drink in public places within counties where the proposition was approved.

***Liquor-by-the-drink county** — a county in which the Liquor-by-the-drink Constitutional Amendment was approved in the 1986 or any subsequent general election.

***Liquor-by-the-drink establishments** — places of business or certain events licensed by the State to engage in the sale of liquor-by-the-drink to the public.

***Minimum price markup** — current pricing system in which liquor retailers cannot price products at less than a certain percentage above acquisition cost; these percentage markups are established by the ABC Board of Review and apply to spirits and wine only.

***Off-premise** — refers to sales where consumption is permitted off the premises only.

***On-premise** — refers to sales where consumption is permitted on the premises only.

***Point-of-sale material** — posters, placards or similar such items made of paper, cardboard or other such non-durable materials which have no secondary value for use outside or away from the retail premises; also included are mirrors which bear substantial advertising matter over a majority of their reflective surface.

***Private club liquor tax (drink tax, excise tax)** — a 10% private club-level sales tax based on the gross receipts from the sale of liquor.

***Reciprocity** — a system which allows a member of one private club to be served at another; a private club may reciprocate with other eligible private clubs if it maintains 50 percent of its gross sales in food.

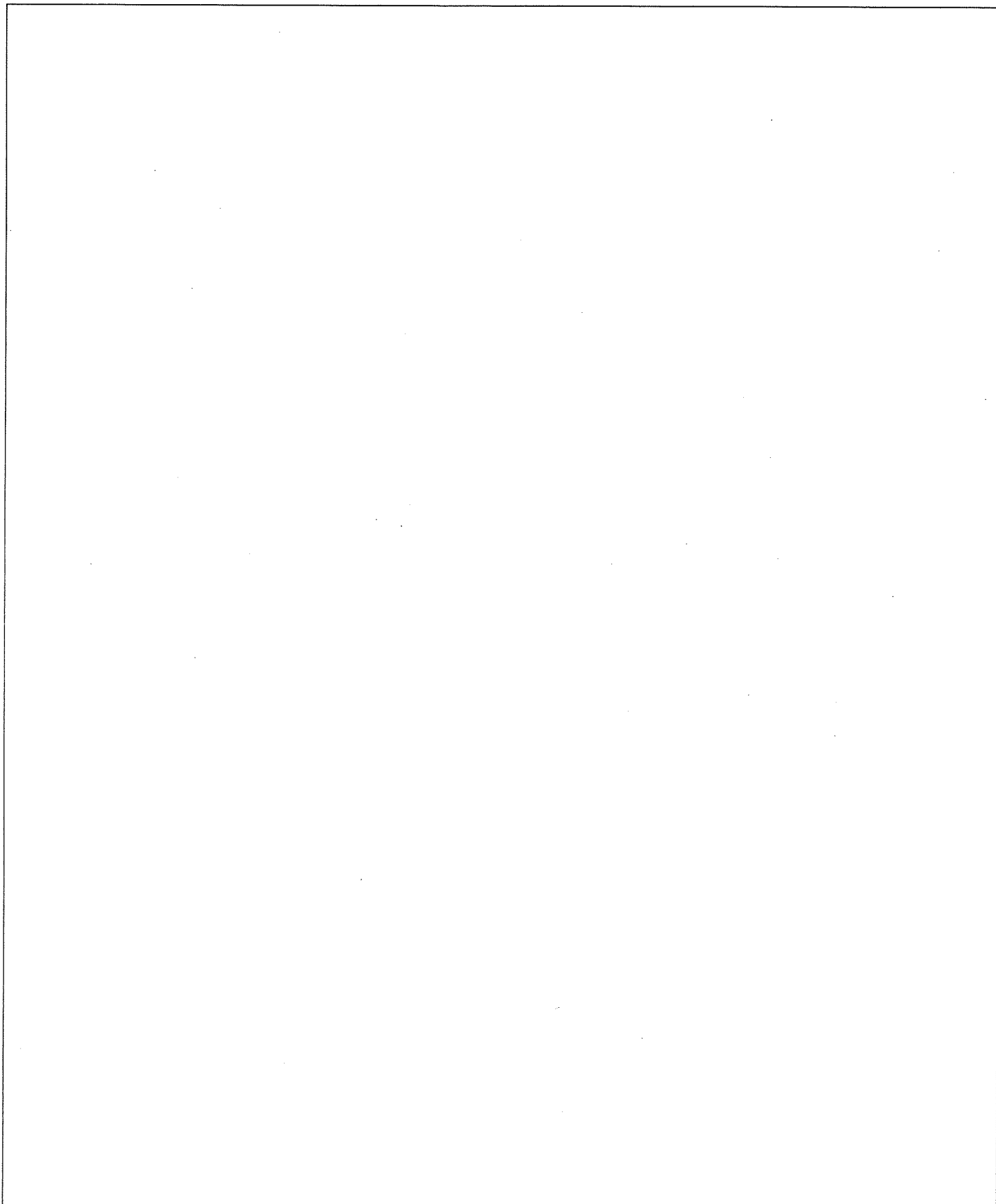
***Strong beer** — beer which contains more than 3.2 percent alcohol by weight.

***Supplier** — a brewer, fermenter, distiller, importer, etc., who sells alcoholic beverages to Kansas licensed wholesalers.

Tavern — a cereal malt beverage establishment, licensed by a local unit of government, where consumption is permitted on the premises.

***3-tier system** — the method of distribution for alcoholic beverages in Kansas; it is comprised of three independent levels of business enterprise—the supplier, the wholesaler, and the retail liquor store; no person in one tier can own a financial interest in any other tier.

***Wet county** — See liquor-by-the-drink county.



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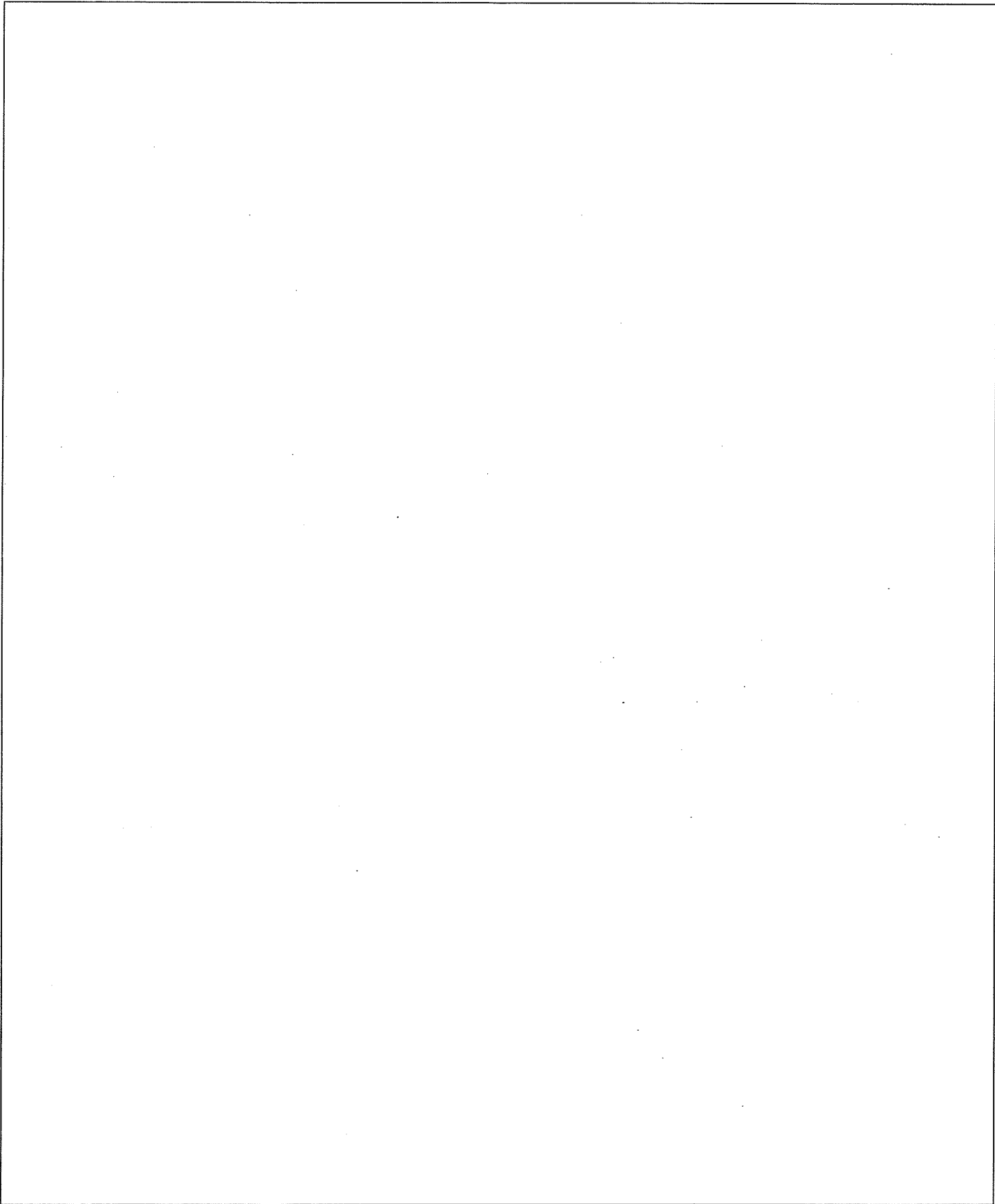
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1/21/87
Attachment #2

Testimony before Kansas Senate
Federal and State Affairs Committee

RE: FINAL REPORT AND RECOMMENDATIONS OF
KANSAS LIQUOR LAW REVIEW COMMISSION

Jeffrey O. Ellis

I. INTRODUCTION

A. Purpose of the Liquor Law Review Commission

1. Comprehensive study of existing liquor laws.
2. Identify problem areas.
3. Recommend changes and modifications.
4. Recommend alternatives depending on liquor-by-the-drink vote.

B. Composition of the Commission.

C. Commission's work schedule and organization.

II. MAJOR RECOMMENDATIONS

A. Recommendations concerning on-premise establishments.

1. Greatest impact on liquor-by-the-drink.
2. Objectives of recommendations.
 - a. Consistency throughout wet and dry counties.
 - b. Enforceability.
 - c. Elimination of hypocrisy.
 - d. Encourage freer competition.
3. Licensing requirements.
 - a. Consistent in both wet and dry counties.
 - b. Individual residency - one year.
 - c. Corporate domestic or authority to do business
 - d. Prohibit reincorporation to avoid regulation.
4. Liquor establishments.
 - a. Wet counties.
 - 1) Liquor-by-the-drink establishments.
 - a) 30% gross sales in food.
 - b) Open to general public.

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- 2) Class A clubs.
 - a) Non-profit fraternal, town clubs, or country clubs.
 - b) Open to members and guests only.
 - c) No minimum food requirement.
 - d) Allowed to reciprocate with State approval and fee.
- 3) Class B clubs.
 - a) Private for-profit eating and/or drinking establishments.
 - b) Open to members and their guests only.
 - c) No minimum food sales requirement.
 - d) No reciprocity.
 - e) State controlled membership and fee.
- b. Dry counties.
 - 1) Allowed Class A and B clubs only.
 - 2) Organized the same as organized for wet counties.
- c. Cereal Malt Beverage establishments.
 - 1) Licensed by local government with a State approval stamp.
 - 2) Sell CMB on-premise in both wet and dry counties as now sold.
- 5. Caterer License.
 - a. Sale of liquor-by-the-drink on non licensed premises.
 - b. Sale to specified groups for special events.
 - c. Purchase liquor stock from wholesalers or retailers.
 - d. Requires temporary permit for each event catered although temporary permit available to groups without need for caterer.
 - 1) I.D. premises.
 - 2) Date and time of event.
 - 3) No longer than 7 days for each permit.
- 6. Alcoholic Beverage Handler Training and Licensing.
 - a. All liquor handlers must register with ABC.
 - b. Servers must be 18.
 - c. Bartenders must be 21.
 - d. State mandated training program must be completed.

- 1) I.D. underage individuals.
 - 2) I.D. and deal with abuse.
 - 3) Familiarize with liquor laws.
7. Sunday and election day sales allowed on-premise.
- B. Recommendations concerning all segments.
1. Point of sale and delivery of product.
 - a. Allow on-premise purchase of liquor stock from wholesalers or retail liquor stores.
 - b. Wholesalers would have option to deliver to on-premise establishments.
 - c. Delivery charges would be allowed.
 - d. Makes for true 3-tier system and promotes freer competition.
 2. Taxation.
 - a. Nonspecific recommendations because subject is purview of legislature.
 - b. Objectives of taxation.
 - 1) All alcoholic beverage treated uniformly.
 - 2) Avoid special excise levies.
 - 3) Reform should be revenue neutral.
 3. Allocation of tax revenue.
 - a. Emphasize prevention, intervention and treatment programs.
 - b. Review effectiveness of local programs.
 4. License fees as recommended in report.
 5. Penalties for underage purchases.
 6. Reorganization of ABC.
 - a. Five member commission.
 - b. Remain subordinate to Department of Revenue.

III. CONCLUSIONS

- A. Recommend the above recommendations of the Commission be considered immediately and separately to implement liquor-by-the-drink.
- B. Remaining recommendations require some additional study and debate, but are urgently needed to achieve comprehensive reform.
- C. Questions.