

Approved 2-3-87  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

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

11:00 a.m./~~p.m.~~ on January 22, 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, Secretary to the Committee

Conferees appearing before the committee:

Mr. Albert Lollar, Kansas Retail Liquor Dealers Association, Inc., (KRLDA)  
Mr. R. E. "Tuck" Duncan, Kansas Wine & Spirits Wholesalers Association, Inc. (KSWA)  
Mrs. Frances Kastner, Director, Kansas Food Dealers' Association, Inc.  
Mr. Neal Whitaker, Kansas Beer Wholesalers Association, Inc. (KBWA)

The Chairman stated that today the Committee is to hear from those conferees wishing to comment upon the Report and Recommendations of the Kansas Liquor Law Commission. Other conferees are scheduled for Monday.

The Chairman welcomed all the conferees. Mr. Albert Lollar was the first conferee. His statement is part of these Minutes. (Attachment #1) It includes his testimony to the Commission dated June 25, 1986; and also a copy of the Association Position Paper which was prepared in August, 1986. He urged the Committee and the entire Legislature to proceed very cautiously and only implement the necessary changes to place liquor by the drink into the Kansas law. Mr. Lollar was the Kansas Retail Liquor Dealers Association (KRLDA) representative.

The next conferee was Mr. R. E. "Tuck" Duncan, of the Kansas Wine & Spirits Wholesalers Association. He also presented his overview of Kansas Liquor Law Commission Report. (Attachment #2)

Mrs. Frances Kastner, of the Kansas Food Dealers' Association, Inc., presented her testimony to the Committee. (Attachment #3) Her testimony dealt with cereal malt beverage (CMB) sales by retailers.

Mr. Neal Whitaker, Kansas Beer Wholesalers Association, spoke next to the Committee. (Attachment #4) His statement dealt with the KBWA's position paper concerning the Governor's Liquor Law Review Commission Report and Related Issues.

Mr. John Lamb, Director of the Alcoholic Beverage Control, was asked by the Chairman if he intends to direct any guidance to this Committee. Director Lamb said he would be available for questions.

The Chairman said after the proposed bill draft comes to Committee, he will designate time for public comment on the bill.

Copies of HB2062, concerning crimes and punishments and providing for the death penalty for first degree murder, were distributed for Committee perusal. The Chairman has asked staff to prepare a memorandum concerning the bill in anticipation of questions that members might have.

The meeting was adjourned at noon.

#1  
1-22/87  
JW

# KANSAS RETAIL LIQUOR DEALERS ASSOCIATION INC.

1950 W. 21st St.  
WICHITA, KS. 67203  
(316) 832 - 1155

CARL L. MITCHELL  
PRESIDENT

TRACY MOODY, 1st Vice - President  
AL FIFFE, 2nd Vice - President  
WAYNE BENNETT, Secretary - Treasurer

January 21, 1987

TO: Senate Federal & State Affairs Committee

FROM: Albert Lollar

RE: Liquor Laws

I have attached copy of my testimony to the Governor's Liquor Law Review Commission dated June 25, 1986. Also attached is copy of our Association Position paper prepared in August, 1986 and sent to our membership of over 500 Kansas Retail Package Store owners. We have tried to work with the Commission in every way, and we do appreciate all the time and effort that has gone into this study.

Most of you have heard me say that most often when the remarks are made about, "Crazy Kansas Liquor Laws" they are directed to our Club or on premise drinking establishments, not to the Retail Package section of our Kansas law. Our Association has always supported Liquor by the Drink. Now we have 36 counties of the 105 that has chosen to permit liquor by the drink. I have talked with Chairman Reilly and some members of this Committee, with Lottery and Para-Mutual issues it will be impossible for you to completely revamp the entire Kansas Liquor Control Act.

The Legislature needs to remember that the Twenty-First Amendment of the U.S. Constitution gives you the control of Liquor in Kansas. I am involved, and a past officer, of the National Liquor Stores Association and can assure you many states have not done a very good job of this power entrusted to them.

The Club License Fees was mentioned here yesterday. I agree it would appear the special 4 day on Premise License could be very hard to enforce. We would like to also mention that a 500% increase of the Retailers License at one time, we feel is a very large jump.

Senator Martin mentioned yesterday the make up of the Commission. I would like to point out there are currently 1025 Retail Liquor Stores in Kansas and there was only one Retailer on the Commission. There was considerable doubt that all members left their pocket-books at the door as requested by Governor Carlin.

Another area of concern is the Temporary Permit and Caterers licenses. This could open the door to package sales operations from the back seat of cars 24 hours a day seven days a week.

Attachment #1  
1-22-87 FSA

Some of you met with Warren Spangle from Indiana last week. I had breakfast with him last Thursday morning and he expressed real concern about this. Warren is in the association management business and works with the Indiana Restaurant Association and the Indiana Package Stores Association, which is where I have known him for several years. Another issue he and I discussed was the point of purchase of product. The Commission recommends permitting the Clubs and on premise establishments buying from Retailers or Wholesalers. Mr. Ellis also mentioned yesterday that the Wholesalers would have a problem servicing these accounts in the rural areas. This would also be very unfair to the Retailers in the Metro areas to lose this business to the Wholesalers. In 1979 the Kansas Legislature gave the Wholesaler the exclusive franchise system which I am sure you are all familiar with. I honestly do not think many of the current club operators realize how convenient it is to call one Retail store and order all their spirits, wine, and strong beer with one phone call. The Retailer in turn may have to order from at least seven different Wholesaler to fill that one order and in many cases already have it all in stock for the Clubs.

As far as the Taxation changes, I would only comment that the records show that the Retailers and Wholesalers have always been good about paying their taxes. The problems seem to have always been the Club licensees. Point of purchase, delivery, and tax collection can become a very difficult enforcement problem. We are very pleased that the Commission chose not to put a stronger Beer product in more outlets. I am sure everyone will agree with the liquor related problem we have today, every effort must be made to not increase these problems. Retail Liquor Stores are doing a good job of checking I.D.'s and with the change in the Kansas Drivers License, this will improve even more and help stop the false I.D. card problem. But, as the A.B.C. Director Lamb testified to the Commission the most problems they have with minor sales are in the grocery stores, convenience stores, and service stations selling 3.2 Beer.

In closing I would like to urge the Committee and the entire Legislature to proceed very cautiously and only implement the necessary changes to place Liquor by the Drink into the Kansas law. Our Association has retained the services of Mr. Ken Rissler, which was called to Texas by the death of a Brother-in-Law but will be back next week, and Mr. Ken Bahr as Lobbyists for our Association this year. I will also pledge myself and fellow Officers and Directors of our Association to work with you in every way we can. Also there are 1025 Retailers in most of your home areas, that have deep concerns about any changes in the Kansas Liquor laws.

Sincerely submitted

  
Albert D. Lollar

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CARL W. MITCHELL  
PRESIDENT

TRACY MOODY, *1st Vice - President*  
AL FIFFE, *2nd Vice - President*  
WAYNE BENNETT, *Secretary - Treasurer*

June 25, 1986

Liquor Law Review Commission

Chairman:

Honorable Judge Herb Rohleder  
and members of the Commission

I am Albert Lollar, Retailer, Topeka, Kansas. Immediate Past-President of the Kansas Retail Liquor Dealers Asso. I have served as an Officer and Director of that Association the past 10 years. A registered Lobbyist in the Kansas Legislature the past three years. I have also served on the Board of Directors of National Liquor Stores Association the past several years and as a Vice-President of that group for two years.

So, considering this I feel qualified to address some of the issues being considered by this Commission. I, like all of you and everyone in this room has heard comments about the "Crazy Kansas Liquor Laws." However, it is not often many people stop and think about really what laws they are referring to. Kansas people, I feel, have always been cautious about making changes. When the Liquor Control act was written and the first stores opened in 1949 many good Kansas Legislators and Kansas Citizens put many things into this law from experience they were able to gather from errors of other states.

It is very evident most problem areas have been created by the Private Club Law, NOT the package store sections of the law.

I am not here today to address each issue that the three sub-committees have presented. I would like to advise the Commission that our Retail Association Board of Directors discussed the off-premise sub-committees recommendations and made a decision that a survey questionnaire should be sent to each of our approximate 500 members. The survey was sent out and as of today we have received over a 50% return on this mailing. This high return should indicate to this Commission the real interest there is among the Retailers of this State as to the future of this Industry in Kansas.

The real importance of this Commission as I visulized it, when appointed by our Governor, was to assist in recommending and setting some direction in regard to needed changes, if and when Kansas got Liquor by the Drink. A good example that we as Kansans need to avoid, is a mess like Oklahoma got themselves into when they passed Liquor by the Drink.

Some of the areas of industry conflict and/or problem perceived by the Retail segment of our industry that I would hope we as an Association will be able to work with you on are:

1. Advertising
2. Minimum percentage mark-up
3. Keeping all Alcoholic Beverages in the Retail Liquor store only.
4. License fees
5. Sunday sales, election days, and holidays
6. Minor sales, and attempt to purchase by minors.

Some of these are more important to us than others and certainly not listed in their order of importance.

I plan to recommend to our Officers and Directors to prepare a full written position of each issue to be sent to you soon after you have completed these four statewide public meetings you are holding. Every member of this Commission should be commended for devoting the time and effort to serve on this Commission.

I urgently request each of you to keep an open mind and consider how well the Retail Package Law has been working in Kansas. I wish that some way it would be possible for you to hear the many comments I hear from Retailers from other states, at many of the National meetings that I attend. There is NO reason to make attempts to repair something that is not broken. However, as I recently read "It's hard to understand facts that go against what we would rather believe."

Sincerely Submitted

*Albert D. Lollar*

Albert D. Lollar  
Director & Lobbyist

TO: Members of the Liquor Law Review Commission

FROM: Kansas Retail Liquor Dealers Association, Inc.

SUBJECT: A review of the recommendations made by the Liquor Law Review Commission.

We submit this Position Paper to the Governor's Liquor Law Review Commission as an Association with a proud and honorable heritage in the alcoholic beverage business, and appreciate having the opportunity to respond to the commission's recommendations.

Our Association represents more than 50% of the liquor retailers in our state and is managed by duly elected officers of the association and by a Board of Directors of not less than 18 members from throughout the state. We act as a medium for the expressions of the views of our members.

Our Board of Directors voted to select a committee to review your commission's recommendations. This committee then made recommendations as to what position our Association should take. We then sent out a questionnaire to our entire membership to review all recommendations. We received over 60% response to this questionnaire, which indicates the high interest of the Retailers in the actions being taken by this Commission.

In reviewing the Liquor Law Review Commission's recommendations we took into consideration the moral and social concerns of our communities as well as our economic needs for survival. We realize that we are the first line of communication with the public. This gives us an insight that other segments of our industry are not exposed to. It is very difficult at times to promote additional sales within our communities, as other merchants do, while being on the defensive because of the product we sell. We, as Kansas Retailers, can not be totally insensitive to the concerns of the communities in which we live.

Our Kansas Liquor Laws, as they apply to our retail operations, have the reputation of being the very best liquor laws in the country. For the past 37 years independent business men and women have owned and operated retail liquor stores in the state and have made a contribution to their communities. We think Kansas should be thankful for the type of people in the liquor business and for the very important revenue which our Industry generates for Kansas.

About the only criticism that is ever made of our Kansas retail system is that prices are sometimes lower in some stores in Missouri. Kansas may have higher liquor prices than some advertised week-end specials in stores in the large cities in neighboring states. However, there are many states that have higher liquor prices than Kansas. Most of the criticism concerning our liquor laws have to do with our club laws and the "Liquor by the drink" issue.

Comments are sometimes made that retailers have a "guaranteed profit." Such is not the case. The A.B.C. Board of Review, under our current law, establishes mark-ups which they feel will provide fair and reasonable prices. The mark-ups will give retailers a reasonable profit provided they achieve enough sales and provided they conduct their business in an effecient manner. Probably 35% of our retailers realize less than minimum hourly wage from their stores. Many of which are owned and have employees that otherwise might not be able to find employment.

No one is getting rich in the retail liquor industry in Kansas and the number of stores in the state has steadily declined for the past several years. Please review the decline of Kansas retail liquor stores since 1977.

DATE	NUMBER OF STORES
31 December 1977	1210
1 July 1982	1114
1 July 1985	1062
1 July 1986	1037

Please review the increase of Licenses issued to "A" and "B" Class Clubs over the years.

DATE	NUMBER OF CLUBS
1 July 1979	997
1 July 1982	1182
1 July 1986	1394

Please review the increase of registered Wholesale salesmen over the years.

DATE	NUMBER OF SALESMEN
1 July 1976	759
1 July 1982	822
1 July 1983	902
1 July 1986	851

The above figures indicate that the growth and profit are not in the retail segment of our industry.

Our retail liquor store owners, both members and non-members of our Association, are very disturbed with some of the recommendations of the Review Commission. The two recommendations that would most adversely effect 95% of we retailers are (1) the elimination of the minimum percentage mark-up system and (2) the provision to permit price and brand advertising.

Please review the recommendations your Commission made in regard to retail liquor operations.

Proposed Recommendations:

1. Recommendation: The county residency requirement for all retail liquor dealers and CMB operators should be eliminated.

We are not opposed to recommendation. But, may be beneficial to enforcement to keep it at one or two years.

2. Recommendation: The state residency requirement for retail liquor dealers should remain at four years.

We are not opposed to recommendation.

3. Recommendation: The disqualification of a (potential or current license holder) licensee if his or her spouse does not meet all of the licensing requirements (other than residency and citizenship) should be eliminated. (KSA 41-311)

We are not opposed.

4. Recommendation: Any convicted felon should be prohibited from obtaining (or continuing to hold) a retail liquor license.

We agree with recommendation.

5. Recommendation: The state license fee of \$100.00 should be increased to \$500.00.

We oppose this recommendation:

A. We are not opposed to an increase, but a 500% increase is to extreme.

B. We are not opposed to a 100% increase to \$200.00, if all other licenses are increased by a comparable percentage for other segments of our industry.

6. Recommendation: Corporations should not be allowed to own a retail liquor store.

We agree with the recommendation.

7. Recommendation: The prohibition on multiple ownership of retail liquor stores and on owning more than one establishment possessing an alcoholic liquor license should be maintained.

We agree with the recommendation.



8. Recommendation: The prohibition on price and brand advertising should be repealed.

We opposed this recommendation.

- A. Due to community pressure on our industry in general and on retail liquor dealers in particular, we oppose any type of advertising to promote more liquor purchases and consumption within the family home. We feel any unsolicited liquor advertisement entering the home, such as handbills and newspaper ads, would not be in the best interest of all concerned.
- B. The cost of advertising in relation to increased sales does not warrant the investment in our present environment.
- C. Advertising could open the door for illegal agreements between different segments of the industry that would hurt other brands and some retailers.
- D. Advertising of liquor in other states has not stopped the decline in sales of alcoholic beverages, and has added a large expense to the retailers operational costs.

9. Recommendation: Present law prohibiting the placing of objects on or with any windows of retail liquor premises which obstructs the vision from the exterior into the interior of the premises should be maintained.

We are not opposed.

10. Recommendation: Current law prohibiting the displaying of point of sale materials, posters or other placards within three feet of any window facing a street or sidewalk should be repealed.

We are not opposed.

11. Recommendation: The prohibition against the using of Christmas lights to outline windows from the outside or inside of retail liquor premises should be eliminated.

We are not opposed.

12. Recommendation: Retail liquor licenses should be allowed more than one sign in their establishments.

We are not opposed.

13. Recommendation: The Director of the A.B.C. should be given specific regulatory authority to establish rules and regulations concerning licensed liquor store signage.

We are not opposed.

14. Recommendation: The regulation prohibiting blinking lights except during the Christmas season should be struck.

We are not opposed.

15. Recommendation: Billboard advertising of wine, spirits, cordials, and strong beer should be legalized.

We are not opposed to distillery, brewery, or winery billboard advertising.

16. Recommendation: Retail liquor dealers should continue to be prohibited from advertising on billboards.

We agree with recommendation.

17. Recommendation: The use of handbills and flyers by liquor retailers should continue to be prohibited.

We are not opposed to recommendation.

18. Recommendation: Advertising on the outside of retail liquor buildings should continue to be prohibited.

We are not opposed to recommendation.

19. Recommendation: Language prohibiting window display advertising should be struck.

We are not opposed.

20. Recommendation: Using photographs of business premises in advertisements should be allowed.

We are not opposed to recommendation.

21. Recommendation: Liquor retailers should be allowed to accept cents off consumer coupons.

We oppose recommendation.

- A. We do not believe retailers should be allowed to accept cents off consumer coupons. This would require additional operating funds as well as record keeping. The present system is adequate which requires the consumer to mail in the coupon for a rebate.

22. 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.

We are not opposed.

(5)

23. Recommendation: The minimum percentage markup system should be repealed with a one year phase-in on the sale of a wine and a two year phase-in period for distilled spirits and cordials. Selling below acquisition cost should be prohibited.

We are opposed to recommendation.

- A. One purpose of our minimum price system is to restrain ruthless commercial behavior which destroys competition through use of superior resources to eliminate small competitors. Another important purpose of this type of control is to enable retailers to operate a business fully within the control law without being forced through economic pressures to engage in illegal practices.
- B. The minimum price system provides an operating stability that results in a license being a valuable privilege which no licensee would jeopardize by violating control laws. Discontinuance of these controls would discourage the continuance in the business of responsible and law abiding licensees who would not hesitate to risk a relatively valueless license.
- C. The liquor, wine and beer industry is not like bread, milk, fruit and other consumer goods and cannot be treated as such. It is a regulated industry under Federal and State laws by the nature of its product, by its social and physiological impact on society, by its relationship and importance to and for State and local revenues and their respective economies. Various studies on liquor consumption show that cheaper drink means higher consumption. Higher consumption can naturally lead to more alcohol-related problems.
- D. Retailers presently in business entered the business under provisions of the Law in effect for many, many years. These licensees have made substantial investments in fixtures, long term leases, equipment, inventory and in some instances real estate. It is only fair that licensees entering a business under one Law should not be forced out of business by another Law unless there is an extremely strong overriding public interest. There is no such public interest involved at this time. Many of the current retail licensees with long term leases signed with consideration of the present law will deplete their capital and could face bankruptcy.
- E. Last, but not least, is the factor of buying and selling. If we as retailers are expected to sell in a competitive market, we must be given the opportunity to buy in a competitive free enterprise system. If we lost price control we would still be restricted to buying our products from one wholesale outlet. If the State of Kansas truly wants free enterprise in the alcoholic beverage business we must be given the opportunity to buy our products from more than one outlet. This can be achieved by going back to open wholeselling or letting retailers buy from out of state wholesale outlets. Kansas wholesalers are no longer under a price control system, yet they have full control over prices with our without price control at the retail level, since we can buy only certain products from certain wholesalers. It would be extremely unfair to the retailers

and consumers to de-control prices at the retail level and continue to permit the wholesalers to have full control of prices as permitted under the current franchise system. Many times you hear, and as presented by the Wholesalers Association, that in 1979 the Kansas Legislature eliminated the guaranteed mark-ups at the Wholesale level. In actuality this should be stated that in 1979 the Legislature lost all control of pricing at the wholesale level by enacting the current franchise distribution law. Most recently the ruling in regard to the Affirmation Law could drastically effect these prices even further.

F. Even tho, the present system is controlled by the A.B.C. Board of Review and if they are unable to set these percentages, as presently required by law, we suggest some provision be made to maintain a reasonable minimum mark-up at retail to not completely destroy our industry in Kansas.

G. For the above reasons we ask that you please do not recommend the removal of our present minimum percentage mark-up system.

24. Recommendation: Off premise purchase of liquor (including wine and strong beer) should continue to be restricted to retail liquor stores.

We are not opposed.

25. Recommendation: The current distinction between CMB and strong beer should be maintained.

We agree with recommendation.

26. Recommendation: Retailers should be allowed to accept credit cards from customers.

We are opposed to recommendation.

A. The 5% charge would lower our percentage of profit.

B. We feel that we would not sell enough more products to offset the added expense.

C. The use of advertising and credit card sales has not stopped the decline of sales in other states. We could be looking at two major added expenses that could force more retail stores out of business.

27. Recommendation: At the wholesale level, the definition of checks should include the modern definition which encompasses debit cards and cite drafts.

We are not opposed.

28. Recommendation: The prohibition on the sale of wine, beer, and distilled spirits for off premise consumption on Sundays, Election days, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day should be removed.

We oppose recommendation.

A. We feel we should be closed on Sundays and the five holidays.

B. We should be able to sell our products on election days if clubs can be open for business.

29. Recommendation: The current prohibition against retailers delivering to private clubs should be maintained.

We agree with recommendation.

30. Recommendation: Wholesalers should continue to be prohibited from delivering liquor, wine and strong beer to private clubs. This prohibition should be extended to liquor by the drink establishments.

We agree with the recommendation.

31. Recommendation: A mandatory minimum penalty of \$100.00 for minors who use false ID's in an attempt to purchase an alcoholic beverage.

We are not opposed

- A. Fine is to low. Mandatory minimum penalty should be much stiffer.

#### POINTS OF INTEREST

1. We endorse Liquor by the Drink
2. The majority of our retailers are not in favor of our stores selling products other than alcoholic liquors. By the same token, no establishment other than retail liquor stores should be permitted to sell alcoholic products.
3. Serious consideration should be given to eliminating the sale of Cereal Malt Beverage at any retail outlet that sells motor fuels. There is a tremendous enforcement problem currently at the gasoline stations and convenience stores.
4. Minors are a major worry. Our future is not in selling minors. The removal of 3.2 beer as an alternative to drinking liquor or strong beer has increased our minor problems a thousand fold. The records will show that our Association members are making strong efforts to not sell to minors.
5. We feel a concerted effort will be made by some club or on-premise establishments to get a delivery service. The Wholesalers, Retailers, or Consumers can not afford this delivery expense. We urge that they must continue to pick-up or pay to have it brought to the on-premise location.
6. Of the thirty-one recommendation, our Association agrees or do not oppose, twenty-five of this sub-committees recommendations. Of the six which we are unable to agree on, every effort has been made to explain our position.

In closing we thank you for the opportunity of making our recommendations to you. If we can be of any assistance to your committee, please feel free to contact us.

Respectfully yours,

*Carl L. Mitchell*

Carl L. Mitchell  
Retailer, President & Lobbyist

*Albert D. Lollar*

Albert D. Lollar  
Retailer, Director & Lobbyist

*Tracy Moody*

Tracy Moody  
Retailer, 1st. Vice-President

*Joe Martin*

Joe Martin  
Retailer, Past-President

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

82 #2  
1/22/87  
JW

M E M O R A N D U M

TO: Senate Federal and State Affairs Committee  
FROM: R.E. "Tuck" Duncan, Executive Secretary  
Kansas Wine & Spirits Wholesalers Association  
DATE: January 22, 1987

RE: Overview of Kansas Liquor Law Commission Report

On Wednesday, this Committee heard a detailed presentation of matters contained within the Final Report and Recommendations of the Kansas Liquor Law Review Commission. The chairman has been kind enough to afford us this opportunity to review with the Committee our general overview of matters contained within the Report before legislation is drafted.

If I had to identify the elements that have guided the work of the Commission I would suggest that they have been first to identify the problems which face the Kansas beverage alcohol distribution system and secondly to enhance the capacity of the legislature and the Alcoholic Beverage Control in responding to these problems. Members of this industry do not forget that they have been entrusted with a privilege.

Having attended approximately 60 subcommittee meetings, public hearings and meetings of the full Commission, I can attest to the fact that there has indeed been a great deal of work invested in the production of the Final Report and Recommendations of the Commission. Time does not permit the luxury to discuss each of the items contained within the 37 pages of the Report in detail. First, I would like to present a historical perspective in which to consider the proposals and then present a summary of our positions on matters affecting wholesalers.

Wine, spirits and beer wholesalers operate in a framework known as the "3-tier system" in which the separate business identities of suppliers, wholesalers and retailers are maintained. Important cornerstones of this system are laws and regulations found in many states which permit or require wholesalers and suppliers to enter into contracts; require wholesalers to purchase brands from the U.S. primary source; require goods shipped from a supplier to pass through an authorized wholesaler's facilities; and require wholesalers to adhere to a range of disclosure rules. Such arrangements normally carry with them performance requirements on the part of wholesalers such as serving all package retailers, carrying sufficient inventory to meet normal demands, participation in promotions to support the

wholesaler's products, and providing informational services to retailers. These business practices clearly define a wholesaler's method of doing business. This 3-tier system has its roots in the 21st Amendment to the U.S. Constitution which grants the primary responsibility and the ultimate control of the sale and distribution of beverage alcohol to the states. While the United States Supreme Court is continually interpreting the 21st Amendment, one can surely agree that the 3-tier system flows naturally from the principals of this constitutional provision and its supporting statutes.

The basic approach of all the states has been to regulate the channels of distribution from the time that the product reached its border until it reached the hands of the consumer. Since 1949 this system has proved to be a practical and effective method of distribution of a product that is potentially subject to abuse, is highly regulated and is highly taxed. Certain economic conditions have also developed as each tier has carved its own market niche. The 3-tier system of distribution of beverage alcohol makes for sound liquor control, protects against tied houses and exclusive outlets, protects against anti-competitive practices, fosters a stable industry and provides for an orderly and safe method for the collection of tax revenues. In short, our basic system since 1949 in large measure has weathered well the test of time.

I believe the foregoing is important because, while the Commission looked "to modernize" liquor laws in light of new economic times, the underlying structure is being preserved in its recommendations. This is not a Report which is throwing aside the beneficial lessons that the state has learned during its tenure of regulating beverage alcohol distribution. This Report, substantially preserves the best elements of the current system, and affords the entire industry an opportunity to conduct business consistent with many national norms. It is no secret that a heightened awareness of consumers to moderate consumption, the increase levels of taxation, and the general change in consumer tastes, has created a declining market for beverage alcohol, not only in Kansas but throughout the United States. Figures presented by the Kansas Department of Revenue in their study "Taxation of Alcoholic Beverages in Kansas" prepared for the Kansas Liquor Law Review Commission dated January 27, 1986, demonstrate that since 1982 there has been a steady decline in the collection of gallonage taxes. Since these taxes are based upon the volume of products sold and not on the price of product sold, they are an accurate gauge of this shrinking market. (As a foot note I think it is interesting that that Report also shows that Kansas has a higher per-capita liquor tax than Missouri, Nebraska, Oklahoma or



Iowa.)

Let me now turn to the recommendations of the Commission.

With regard to the recommendations concerning all segments of the industry set out at pages 9, 10, 11, 12 and 13, the Kansas Wine & Spirits Wholesalers Association (KWSWA) generally supports the recommendation of the Commission regarding maintaining several strengths of beer, supports the recommendations of the Commission regarding taxation, on license fees, on licensee's eligibility, on DUI violations and underage purchases, on a mandatory minimum penalty for purchases by minors, and on those matters relating to the Division of the Alcoholic Beverage Control, its Director and employees. I have attached to this memorandum for the benefit of members of the Committee the position paper of the KWSWA submitted to the Liquor Law Review Commission regarding point of purchase and delivery of product. The KWSWA does have a serious concern about eroding the market of the licensed Kansas liquor retailer by authorizing the licensed Kansas wholesaler to sell and deliver directly to private clubs and liquor-by-the-drink establishments. As stated in the issue paper written for the Commission by its staff "delivery by wine and distilled spirits wholesalers would increase costs significantly. The number of deliveries in the distribution system will multiply without an increase in sales. As costs to wholesalers rise, the price to the consumer will rise proportionately. Retailers who currently sell to clubs will lose that portion of their business. Wine and spirits wholesalers, unlike beer wholesalers, must transport products over a large geographic area, increasing the cost of delivery." if this Committee should decide to address this issue, we would like to reserve the opportunity to return to the Committee to discuss in further detail the specifics of any proposed legislation.

With regard to the recommendations concerning implementing liquor-by-the-drink, which is the priority concern to be addressed in implementing the new constitutional amendment, set out at pages 15, 16, 17 and 18 of the Commission Report, the KWSWA supports the recommendations regarding licensing, liquor establishments, CMB establishments, a caterer's license, temporary permits, alcoholic beverage handler training and licensing, Sunday and Election Day sales, and promotional activities.

With regard to the recommendations concerning wholesalers and suppliers set out in the Commission's Report at pages 23 through 29, the KWSWA supports the recommendations of the Commission on residency requirements,

on other licensing requirements for suppliers, on other licensing requirements for wholesalers, on employee licensing, on gallonage tax payments, on limiting supplier beneficial interests, on limiting wholesaler beneficial interests, on a supplier's ability to do business in Kansas, on franchise agreements, on product containers and sizes, on supplier and wholesaler employee activities, on seminars and samplings, on house controled brands, on transportation of products from suppliers, on the maintenance of records, on point of sale materials and product displays, on sales to the military, on supplier and wholesaler advertising, on uniform FOB and billing practices, and on conforming to BATF regulations.

Hence, the KSWA generally supports most of the recommendations of the Commission affecting wholesalers with the exception of the one item that I have previously discussed. This is not to say the Commission adopted all our suggestions -- it did not.

Yet, in the final analysis the question becomes who is actually served by the legislature's adoption of the recommendations of this Commission. Some will tell you that because members of the industry served on the Commission's panel that it is merely the industry that is being best served. However, I believe the consensus of most observers of the Commission's deliberations over the past 15 months would agree that the Commission's proposals are not aimed at serving the industry, but are aimed at serving the state and the responsible consumer of beverage alcohol in Kansas.

It is in that light that we can generally support the Final Report and Recommendations of the Kansas Liquor Law Review Commission, except as noted, for in so doing we are supporting the underlying purpose of liquor control laws and regulations which provide a wholesome environment for the distribution and consumption of alcoholic beverages.

Thank you for your attention to and consideration of these matters.

## ISSUE: DELIVERY

The Kansas Wine and Spirits Wholesalers Association believes that the delivery system in Kansas for wine and spirits products should be as follows:

1. All wine and spirits products should be delivered by wholesalers to licensed Kansas retailers.

2. Kansas retailers should have the option to make deliveries to club, but should not be required to make such deliveries.

3. Cereal malt beverages and beer should, at the option of the wholesaler, be delivered to either retailers or clubs.

4. With regard to item 3 above, the club should have the ability to purchase beer from either the wholesaler or the retailer.

### Reasoning:

1. The wine and spirits distribution system has been developed in Kansas during the past 37 years as a result of independent business decisions, and regulatory controls. The state's interest has been, and should continue to be, to ensure that there is an orderly market and flow of product, and that consumers have an opportunity to purchase goods at reasonable prices. Increased costs mean increased prices. Efficiencies in the distribution system means reduced or stabilized costs.

The Kansas wine and spirits market is NOT different from other markets with regard to finding efficiencies in methods of distribution. However, the Kansas market IS different when one considers the small volume of sales and the vast geographical distances which are covered. More miles, more stops, more deliveries means more costs. Should the state be concerned with costs? Yes, inasmuch as the state has an interest in ensuring a viable industry from which to continue to collect needed tax revenues. State policies which create inefficiencies, increased costs, and ultimately unstable businesses should be avoided.

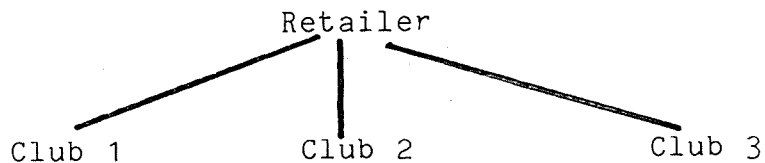
The transition from the open wholesaling system to a franchise wholesale system was aimed at eliminating an unstable business climate. The Myers-Stauffer Report conducted in 1978 initiated the legislative study which eliminated open wholesaling, because it was determined that there existed an unstable economic climate. Now that the

environment has been changed, to revert to creating an inefficient delivery system is contrary to the state's interest and contrary to earlier economic studies.

Why are direct deliveries to clubs of wine and spirits products unadvisable? (a) Without the passage of liquor by the drink there will be an increase of approximately 1,200 new delivery points. With liquor by the drink the number of delivery points will exceed 1,200. Not one more unit of product will be sold, but costs will be increased. These costs will be absorbed into the cost of the entire distribution network, and all consumers will pay more for nothing in return. (b) The existing retailer will lose a share of market. We estimate that 25% of current retail sales are sales to clubs. As their sales decrease, their percentage cost of sale increases (certain fixed costs remain unchanged) and their profitability, i.e. stability, is threatened. This is not a "ghost" but a reality. (c) Service to clubs is reduced. Clubs now have the ability to purchase all their beverage alcohol products from a single source. These retailers, acting as "wholesalers under federal law" are in essence "depots" for the delivery of club goods. The availability of product is geographically closer, and retailers can meet unexpected needs.

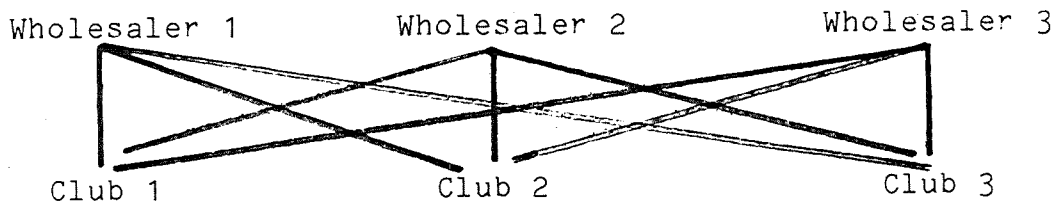
The following graphs illustrate several of these points:

Today:



Direct Delivery:

(there are at least 3 wine and spirits wholesalers in a given territory)



Each of the above lines represent a delivery transaction and thus a cost. From Today to Direct Delivery we have increased

the number of transactions from 3 to 9 (or by 300%) without increasing the number of selling units. Professor Daicoff in his 1986 study relating to pricing found that "there does not seem to be major differences in the net profitability of Kansas liquor wholesalers as compared to their national counterpart." (p. 28) Thus, increasing costs as illustrated above will have the effect of creating below-national-average wholesalers and potentially returning Kansas wholesalers to the 1978 uneconomic climate as identified in the Myers-Stauffer Report.

Finally, unlike distributors of cereal malt beverages and beer, wine and spirits wholesalers transport products over greater distances. Most beer distributors transport products in geographic territories of 4 or less counties. Wine and spirits wholesalers may transport products in as many as 100 counties. It is important to remember that we are not designing a system for the first time, but we are attempting to redesign a system. The existing realities must be considered and incorporated within, not thrown out. Operational differences must be acknowledged and considered. To that end, point 1 is offered.

2. With regard to the issue of whether retailers should deliver to clubs, attached please find the position paper of the Kansas Wine and Spirits Wholesalers presented to the Kansas Legislature in 1985. Clearly, this should be optional, but does meet a current sub-territory need.

3. As explained above, cereal malt beverage and beer distributors have an ability, because of the smaller territories they serve, to make direct deliveries at minimal cost and beer wholesalers have expressed an interest in making direct deliveries to clubs. Further c.m.b. deliveries are made to clubs today, hence while there will be market share loss to retailers, this is off-set by preserving their market for wines and spirits to clubs.

4. Clubs should still be able to purchase malt products from retailers. This will allow clubs to meet unexpected inventory short-falls.



# Kansas Food Dealers' Association, Inc.

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January 21, 1987

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### DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

RE: CMB SALES BY RETAILERS

EXECUTIVE DIRECTOR  
JIM SHEEHAN  
Shawnee Mission

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of wholesalers, distributors and retailers of food products throughout the state.

~~We attended numerous meetings of the Kansas Liquor Law Review Commission as well as various sub-committee meetings throughout 1986. No one who attended those meetings would question the hard work and effort put forth by the members of the Commission and the support staff.~~

It is difficult, however, to read the entire report and not come up with numerous inconsistencies in the three sub-committee reports and the ultimate conclusions reached by the entire committee.

On page 3 the fact is noted that since 1937, the Kansas Legislature classified beer with an alcoholic content of 3.2 percent by weight or less, as being "cereal malt beverage". Grocers have had the right to sell CMB in Kansas. The last sentence in that same paragraph says "even though intoxicating liquors were banned, Kansas did have access to certain alcoholic beverages." This leaves the impression that grocery stores have been selling alcoholic beverages for the past fifty years.

However, whenever alcoholic beverages are discussed in the legislature, certain groups or individuals want to restrict the right to sell alcoholic beverages to a limited number of retailers through the unfounded premise that increasing the number of retail outlets will increase consumption.

Reading this report indicates that the right to sell all-strength beer, and the right to sell CMB on Sundays should be restricted to certain establishments.

*JW*  
#3  
1/22/87

Attachment #3  
FSA - 1-22-87

The statement on page 21 of the Liquor Laws Review report indicates that "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".

For years we have heard that liquor retailers operate under very restrictive sales practices, and therefore need special treatment. The first recommendation made on page 21 of this report would permit the sale of lottery tickets, as well as "mixes and drink-related items", but fails to define "drink-related items".

We are not objecting to their seeking the privilege to sell products other than liquor because we firmly believe in the free enterprise system and giving the consumer the freedom to choose the place to make a purchase. We have never appeared before a Legislative Committee asking for the exclusive right to sell food products, and all of you are familiar with the food items sold at other retail outlets such as discount stores, drug stores, and even in some department stores. In a matter of fairness, we don't like restrictions placed upon us as to what we can sell in grocery stores.

Our philosophy has always been that IF a grocery store wants to sell items that can be purchased in special stores or establishments, then that grocer MUST COMPLY WITH THE LAWS GOVERNING THAT PRODUCT. We have grocers who have a full-service pharmacy within their super market or a full service restaurant, and in all instances they MUST follow the same laws as any other pharmacy or restaurant, or forfeit their license.

If the Legislature truly wants to update our liquor laws, we have to ask why should liquor stores have an exclusive right to sell alcoholic beverages? Why should liquor stores be the only retail outlet for "strong beer" when the difference listed on page 31 of this report indicates there is LESS THAN ONE PERCENT difference in the alcoholic content of CMB and the highest of the "strong beers" which is listed as having 4.1% alcoholic content by weight.

The argument that the enforcement would be difficult if all CMB outlets are permitted to sell all-strength beer is inconsistent with the rest of the recommendations in the report.

On page 16 of the report the recommendation is that the CMB licensure remain with the local units of government, but that the ABC would issue a State stamp, would approve the CMB license, and retain part of the license fee to recover some of the cost of policing CMB establishments. The addition of all-strength beer to the products sold in CMB outlets would not increase enforcement problems.

We believe it is discriminatory to permit the sale of CMB and liquor on Sundays for ON-PREMISE consumption, yet deny Kansas citizens the right to purchase the same product for OFF-PREMISE CONSUMPTION on Sunday merely because they don't want to go a club, or a tavern.

We disagree with comments that permitting Sunday sales of CMB will increase the consumption or the possibility of more drunken drivers on the road. It would be more likely that those who have been drinking ON PREMISE would cause more accidents than those who purchase the product for consumption in their own homes.

In these times of economic hardship, our Kansas merchants should be permitted to sell any product that is legal in Kansas, and offer it for sale at the same times, or on the same days, as our competitors across the state line. Not only do Kansans go to another state to purchase their alcoholic beverages or CMB, but they also do their entire week's grocery shopping while they are in the vicinity. This results in sales tax and income tax dollars being siphoned out of Kansas.

Several years ago testimony presented to this Committee indicated that nearly one-half a million dollars were lost to our neighboring states through Sunday beer sales. We don't believe we should make our citizens cross over into another state to purchase a product that is legal in Kansas just because it happens to be Sunday afternoon instead of Saturday.

We also believe that Kansans should be able to purchase all-strength beer wherever CMB sales are permitted.

We have NEVER asked legislators to guarantee the grocery retailers a profit regardless of their operating capabilities. We hear that numerous retail liquor dealers would go out of business if they lost the exclusive right to sell "strong beer". Many of our grocers have gone out of business because NO ONE gave grocers the exclusive right to sell "food products". That is part of the supply and demand risk of doing business our members have accepted.

On page 20 of this report, the first item expresses the philosophy we have concerning the free enterprise system, where supply and demand determines which retailers remain in business. The recommendation is that "There should be no limit placed on the number of CMB or retail liquor licenses issued." The reasoning behind the recommendation is that the economics of the liquor industry should determine the "appropriate" number of retail liquor stores or other establishments, which we agree with wholeheartedly.

However, we view the next two items as conflicting with the above recommendation that liquor store licenses should not have an artificial value.



We wonder how the corporate structure of a liquor store would be different than the corporate structure of other retail establishments. The State has no difficulty in collecting appropriate taxes from grocery stores that are incorporated, and we don't believe this would be any different if grocery stores were permitted to sell liquor.

Insofar as multiple ownership of liquor stores, the rationale given is that multiple ownership "impedes competition", yet the first item on page 20 indicates the Commission believes that economic conditions (which we believe includes competition) should determine the "appropriate" number of retail liquor stores. Therefore, we believe the prohibition of multiple ownership DOES create an artificial value on owning a retail liquor dealer's license.

The last recommendation on that page limiting the sale of liquor and strong beer for OFF-PREMISE consumption to retail liquor stores on the assumption that underaged purchases would increase is in our opinion an unfair and biased statement.

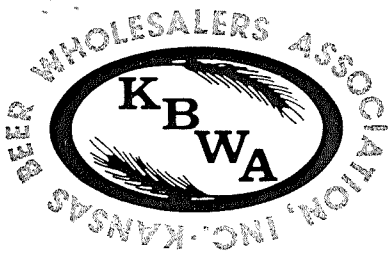
Our members would NOT deliberately break the law in order to make a sale. We have consistently, and repeatedly, urged our members to insist that grocery checkers ask for an ID when someone who appears younger than the legal age attempts to make a CMB purchase. With the age for CMB purchases going to 21 on July 1, 1987, it is inconsistent to believe that grocers would check for ID's for a CMB sale but not for the sale of all-strength beer or other alcoholic beverages.

We commend the Review Commission for recognizing the fact that with the phasing in of age 21 for CMB purchases, our young people have access to altered or fake ID's which appear very authentic. We hope this Committee enacts legislation making it just as illegal to use a fake ID for CMB purchases as for alcoholic beverages

We request that this Senate Committee give serious consideration to introducing legislation recognizing an all-strength CMB rather than continuing with the misleading and antiquated distinction of strong beer and cereal malt beverage. We believe that the retailers who are currently licensed to sell CMB should be permitted to sell the all-strength beverage if they so desire.

We also believe that Kansans should have the opportunity to purchase the same CMB or alcoholic beverages for OFF-PREMISE consumption on Sunday as those who make their purchases at restaurants, clubs or taverns.

I appreciate the opportunity of appearing before you to express some of our concerns about the Liquor Law Review Commission's Report. If you have any questions either now or later as the individual bills are drafted, I will be happy to answer them.



1/22/87  
#4  
Neal Whitaker

KANSAS BEER WHOLESALERS ASSOCIATION POSITION PAPER  
CONCERNING THE GOVERNOR'S LIQUOR LAW REVIEW COMMISSION REPORT  
AND RELATED ISSUES

The Commission studying Kansas laws as they relate to cereal malt beverage, beer and alcoholic beverages has done a very thorough job of making recommendations for change in the method that these products are sold and distributed to Kansas consumers. The Commission studied practically every aspect of the very complicated Kansas law in an effort to simplify and modernize the system. For the most part the Kansas Beer Wholesalers Association supports those recommendations in the report that relate to the beer wholesaling industry. There are, however, several issues which we wish to call to the attention of the legislature.

The commission struggled with debate over whether Kansas should continue the distinction between cereal malt beverage (3.2% beer) and what has been traditionally called "Kansas strong beer". The KBWA recommendation is that all beer containing less than 5% alcohol by weight be classified as cereal malt beverage and made legal for sale in Kansas in all outlets that today sell cereal malt beverage or beer. Following instructions from the Commission, the ABC tested a number of beers in both 3.2% and regular strength. The results, found in Appendix A of the report, show that the difference between 3.2% and regular beer varies from three tenths of one percent to nine tenths of a percent with the most popular beers falling in the range of five or six tenths of one percent difference -- an amount that is almost insignificant.

The dual system in Kansas creates a number of supply problems. Wholesalers must stock duplicate packages of each product which doubles the number of packages they need to keep in inventory. Many brands are not available in 3.2% or are in limited supply therefore making it difficult to keep some items in the market place. All of this based on a distinction that is almost insignificant.

SUNDAY SALES

Today in Kansas private clubs are allowed to be open on Sundays to sell liquor by the drink to their members. Under a proposal passed by the legislature in 1986, liquor by the drink establishments would be allowed to be open for the sale of alcoholic beverages to the public by the drink on Sundays.

The Governor's Liquor Law Review Commission recommended that all outlets selling cereal malt beverage, regular beer, wine and spirits by the drink for on premise consumption be open on Sundays. The Kansas Beer Wholesalers Association supports these recommendations and recommends that the sale of cereal malt beverage be legalized in off premise situations as well. This would definitely be another step toward modernization of Kansas law.

#### DELIVERY

The delivery system was carefully considered by the Liquor Law Review Commission and their recommendation was the result of a compromise that the KBWA supports. The proposal will treat private clubs and liquor by the drink establishments on an equal footing with licensed liquor retailers. The plan will allow wholesalers to make direct deliveries to private clubs and liquor by the drink establishments. The commission also recommends that these on premise establishments be allowed to purchase their products from a licensed liquor retailer who may also deliver those products or for that establishment to go to a wholesaler and pick up the products themselves. This recommendation treats on premise establishments as retailers rather than forcing them to pay an additional mark-up by requiring their products be purchased from licensed liquor retailers.

Regarding the commission recommendation concerning wholesalers and suppliers, Kansas Beer Wholesalers Association supports those recommendations.

1/14/87

*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.