

Approved: 2-7-06
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 17, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Connie Burns, Committee Secretary

Conferees appearing before the committee:

David Corbin, Kansas Department of Revenue

Others attending:

See attached list.

The Chairman provided information on two bill introductions. The first bill introduction is an act concerning municipalities; relating to consolidation.

Senator Reitz made the motion that this request should be introduced as a committee bill. Senator Vratil seconded the motion. The motion carried.

The next bill introduction pertains to wine manufacturers permitted to sell wine directly to consumers subject to requirements to maintain three-tier distribution system.

Senator Vratil made the motion that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Dave Corbin, Kansas Department of Revenue, appeared before the committee to request a bill introduction. (Attachment 1)

1. KSA 41-106 violations of law; copy of citation
2. KSA 41-713 retailers; mixing drinks on premises and employment of certain persons prohibited
3. KSA 41-2610 Unlawful acts of licensee

Senator Vratil made the motion that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

The hearing on **SB 297** was cancelled, the committee discussed some of the aspects of the bill and staff was asked to provide an amendment to the bill which would allow the State Fair a temporary permit and removing certain sections dealing farm winery and micro-breweries.

Mary Torrence, Revisor of Statutes, provided the committee background information on 2005 City-County consolidation legislation. (Attachment 2) In the 2005 regular legislative session two bills **SB 262** and **HB 2083**, both dealing with city-county consolidations were referred to Senate Federal and State Affairs for hearings and were passed out of committee and debated before the Senate. The Senate bill was killed on the floor and the House bill passed and became law. A summary of the bills was provided. After the bill became law a commission was appointed to propose a plan for consolidation of the City of Topeka and Shawnee County. The plan was submitted to voters and was rejected in the election.

The meeting was adjourned at 11:05 am. The next scheduled meeting is January 18, 2006.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

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Phil Wilkes	Revenue
Lynn Robinson	Revenue
Brad Burke	ABC-KDOR
Tom Palace	PMCA OF KANSAS
David R. Corbin	KDOR
Michael Curran	Rep. Burroughs - Legislative Asst
Carole Jordan	KDA
Jana Dunbar	KDOC
Norm Jennings	RCCCA
Dan Murray	Federico Consulting
Andrew Couch	Federico Consulting
TERRY HOLDREN	KANSAS FARM BUREAU
Judy Malar	KAC
Smiley Jacquot	LKM
Charity Caldwell	Joplin Chamber of Comm
CHARLES E. MCBRIDE	WIAE INSTITUTE
Chyde Kensington	Kensinger & Assoc.
TUCK DUNCAN	KS Wine & Spirits Wholesalers ASSN
Jennifer Lyon	Pinegar, Smith, & Associates
Paul Danner	Danner Assoc.
Mark Boranyak	CAPITOL STRATEGIC
Ed May	LCR

K.S.A. § 41-106

KANSAS STATUTES ANNOTATED
CHAPTER 41.--INTOXICATING LIQUORS AND BEVERAGES
ARTICLE 1.--GENERAL PROVISIONS
41-106. Violations of law; copy of citation.

Any ~~citation~~ **notice to appear** issued **to a person by a law enforcement officer** for a violation of the liquor control act or the club and drinking establishment act shall be ~~delivered to~~ **served upon** the person allegedly committing the violation. ~~at the time of the alleged violation.~~ A copy of such ~~citation~~ **notice to appear** also shall be **served upon** ~~delivered by United States mail to the~~ licensee within 30 days of the alleged violation. **Service on the licensee shall be made in person or by mailing a copy of the notice to appear to the licensee's last known address. Service shall be complete upon personal service or mailing.** If such ~~citation~~ **notice to appear** and copy are not so ~~delivered~~ **served**, the citation shall be void and unenforceable **administrative action against the licensee for said alleged violation shall not be taken by the director of alcoholic beverage control.**

History: L. 2000, ch. 166, § 9; July 1.

This statute was passed during the 2000 legislative session and was included with the new legislation concerning underage controlled buys of alcoholic liquor in SB 430. *See*, Session Laws 2000, ch. 166, §§ 4-10.

When read along with the other new sections in SB 430, it is apparent that the purpose was to apply a 30 day notice requirement for administrative action on minor in possession violations (MIP's). However, as written, the language of K.S.A. 41-106 arguably renders most of the liquor control act and club and drinking establishment act unenforceable. The plain statutory language requires all violations of the liquor control act and the club and drinking establishment act to be issued by citation at the actual time of the violation, and if such procedure is not followed, the violation is void and unenforceable. This makes all violations of the tax law, all hidden ownership cases, and any violations that are concealed or that require further investigation, impossible to administratively prosecute since it is impossible to cite them at the time the violation actually occurs. Additionally, the statutory language seems to render criminal prosecution void unless the citation is issued at the actual time of the violation.

These unintended consequences are becoming reality as attorneys are now routinely raising the issue that the violation for which their client has been cited by ABC, was not cited at the actual time of the violation. This is creating a large volume of litigation since licensees are being told by their attorneys that a district court judge will throw any adverse decision by the ABC out on judicial appeal, given the plain language of K.S.A. 41-106.

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Attachment 1

K.S.A. § 41-713

KANSAS STATUTES ANNOTATED

CHAPTER 41.--INTOXICATING LIQUORS AND BEVERAGES

ARTICLE 7.--CERTAIN PROHIBITED ACTS AND PENALTIES

41-713. Retailers; mixing drinks on premises and employment of certain persons prohibited.

It shall be unlawful for a retailer of alcoholic liquor: (1) To permit any person to mix drinks in or on the licensed premises; (2) to employ any person under the age of twenty-one (21) years in connection with the operation of such retail establishment; ~~or~~ (3) to employ any person in connection with the operation of such retail establishment who has been adjudged guilty of a felony, *(4) to employ any person in connection with the operation of such retail establishment who has had a license revoked under the provisions of the liquor control act, cereal malt beverage act, or club and drinking establishment act; or (5) to employ any person in connection with the operation of such retail establishment who has had a beneficial interest in a license that was revoked under the provisions of the liquor control act, cereal malt beverage act, or club and drinking establishment act.*

History: L. 1949, ch. 242, § 76; March 9.

Currently nothing prohibits someone with a revoked liquor license from being hired to run a liquor store. Theory is that if a person is unfit to own a liquor store, they should not be able to continue to run one after their license has been revoked. Problem of revoked licensees being hired by successor to run the liquor store or DE is becoming more prevalent. Reg 14-13-14(d)(1) does not prohibit this activity because K.A.R. 14-13-14(b) creates a loophole saying the regulation only applies to independent contractors, not regular employees.

K.S.A. § 41-2610

KANSAS STATUTES ANNOTATED
CHAPTER 41.--INTOXICATING LIQUORS AND BEVERAGES
ARTICLE 26.--LICENSURE AND REGULATION OF SALE OF LIQUOR BY THE DRINK
41-2610. Unlawful acts of licensee.

It shall be unlawful for any licensee or holder of a temporary permit under this act to:

- (a) Employ any person under the age of 18 years in connection with the serving of alcoholic liquor.
- (b) Employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States.
- (c) Employ knowingly or to continue in employment any person in connection with the dispensing or serving of alcoholic liquor or mixing of drinks containing alcoholic liquor who has been adjudged guilty of a violation of any intoxicating liquor law of this or any other state, or of the United States, during the two-year period immediately following such adjudging.
- (d) In the case of a club, fail to maintain at the licensed premises a current list of all members and their residence addresses or refuse to allow the director, any of the director's authorized agents or any law enforcement officer to inspect such list.
- (e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.
- (f) Permit any employee of the licensee or permit holder who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is 21 years of age or over.
- (g) Employ any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.
- (h) Employ any person in connection with the operation of the of the club, drinking establishment, or temporary permit who has had a license revoked under the provisions of the club and drinking establishment act, liquor control act, or cereal malt beverage act; or*
- (i) Employ any person in connection with the operation of the of the club, drinking establishment, or temporary permit who has had a beneficial interest in a license that was revoked under the provisions of the club and drinking establishment act, liquor control act, or cereal malt beverage act.*

History: L. 1965, ch. 316, § 10; L. 1975, ch. 52, § 17; L. 1978, ch. 189, § 15; L. 1979, ch. 152, § 6; L. 1985, ch. 171, § 4; L. 1987, ch. 182, § 65; April 30.

Currently nothing prohibits someone with a revoked liquor license from being hired to run a liquor store. Theory is that if a person is unfit to own a liquor store, they should not be able to continue to run one after their license has been revoked. Problem of revoked licensees being hired by successor to run the liquor store or DE is becoming more prevalent.

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MEMORANDUM

To: Senate Committee on Federal and State Affairs
From: Mary Torrence, Senior Assistant Revisor of Statutes
Date: January 17, 2006
Subject: Background on 2005 City-County Consolidation Legislation

During the 2005 regular legislative session, Senate Bill No. 262 and House Bill No. 2083 , both dealing with city-county consolidation, were referred to Senate Federal and State Affairs. Both passed out of the committee and were debated in the Senate. Senate Bill No. 262 was killed on final action and House Bill No. 2083 passed and became law. A summary of the bills is attached.

Following passage of House Bill 2083, a commission was appointed to propose a plan for consolidation of the City of Topeka and Shawnee County. The commission's plan was submitted to the voters in a mail ballot election which ended December 15, 2005. The plan was rejected upon a negative vote of 60% of the county voters voting in the election and an affirmative vote of 70% of the voters of the city voting in the election.

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Attachment 2

2005 Senate Bill No. 262

- The bill has statewide application.
- A city (or cities) and county would adopt a joint resolution providing for a commission to prepare a plan for consolidation of all or part of city and county governmental functions; if city doesn't adopt the joint resolution, it will not be part of the consolidation.
- The voters of the county vote on the joint resolution; if approved by a majority of the voters countywide, the commission is formed as provided in the joint resolution.
- The study commission receives only expenses and may hire an executive director; a tax not to exceed one mil may be levied to pay costs of commission.
- The plan developed by the commission is submitted to the voters; if approved by a majority of the voters countywide, the plan is adopted; if the voters of any city vote against the plan, the city is not part of the consolidation.

2005 House Bill No. 2083

- The bill is limited to Topeka/Shawnee County; cities of Auburn, Rossville, Silver Lake and Willard are excluded.
- A commission is formed within 10 days after effective date of act to prepare a plan for consolidation of all or part of city and county governmental functions; one member each appointed by the Governor, President of the Senate, Minority Leader of the Senate, Speaker of the House and Minority Leader of the House; no elective or appointive official or employee of a city or the county may be appointed.
- The commission receives compensation and expenses and shall hire an executive director; the executive director may hire staff.
- The plan developed by the commission is submitted to the voters; election shall be conducted by mail ballot; if approved by a majority of the voters in Topeka and a majority of the voters outside Topeka, the plan is adopted.
- The bill prohibits Topeka from initiating annexation until after a plan is submitted to the voters.