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ABC ADVISORY OPINION 2023-001

November 21, 2023

- Question:** “Can alcohol be sold on property owned by the school system that is leased to the JCFC (Johnson County Fiscal Court) and if so, are there any restrictions on the days and times which it can be sold?”
- Requested by:** Johnson County Fiscal Court
Hon. Mike Endicott, Johnson County Attorney
- Syllabus:** Alcohol can be sold on property owned by a school district leased to a third party. The sale of alcohol between midnight and 6 a.m. and on Sundays would be prohibited unless permitted by local ordinance. Advertisements of malt beverages must be kept more than one hundred (100) feet from the property line of the nearby school.
- Statutes construed:** KRS 243.220, KRS 244.540
- Legal authority:** KRS 243.220, KRS 244.050, KRS 244.290, KRS 244.480, 804 KAR 5:070

Opinion of the Department of Alcoholic Beverage Control

Pursuant to 804 KAR 6:020, the Johnson County Fiscal Court (“Requester”) submitted a request for an advisory opinion to the Department, inquiring whether alcohol can be sold on property owned by the Johnson County Board of Education (“BOE”) and leased to a third party and if so, whether there are any restrictions on the days and times it may be sold. According to the Requestor, the BOE is constructing a new high school and wants to lease adjoining property owned by the BOE to the Requester who in turn will lease the property to a private developer. The private developer intends to construct an approximately 50,000 square foot building that will be

used as a bowling alley, restaurant, and host other recreational activities. The Requestor states that the proposed building would include a confined area where food and alcohol would be served. The BOE will have exclusive access to parts of the building for athletic training and priority use of the bowling facilities. The private developer will pay for the construction of the building and enter into a long-term lease with the Requestor for the building and realty.¹

The statutes and regulations governing alcoholic beverages do not contain any prohibitions against a school district leasing their property to a third party who intends to open a retail alcoholic beverage licensed premises. Neither is a licensed premises prohibited from operating on property adjoining a school's property. Prior to 1998, KRS 243.220 prohibited premises "located within two hundred (200) feet of a building used primarily . . . for class rooms of a school" from being licensed for retail alcoholic beverage sales; the General Assembly removed that prohibition from the law in 1998. *See* Ky. Acts Ch. 121 (HB 609). Currently, KRS 243.220 requires only that an applicant for a license to either be the owner of the property or possess a lease for the property for a term not less than the license period. The statute is silent concerning who may own the property or the proximity of the property to a school.

The only remaining statute invoking prohibitions based upon proximity to a school's property is KRS 244.540(1), which states: "No licensee shall advertise any malt beverage by trade name, trade-mark or in any other manner within one hundred (100) feet of the property line of any school or church. The distance shall be by straight line."² As such, to operate within the law the proposed business could have no signs, posters, placards, decorations, or graphic displays which bear a trademark, trade name, trade slogan or facsimile of a product, container, or display, associated with a particular brand of malt beverage within 100 feet of the school's property line.

Considering the language of the former statutory prohibition on licensing premises "within 200 feet of a building used primarily for . . . class rooms of a school," the Department interprets

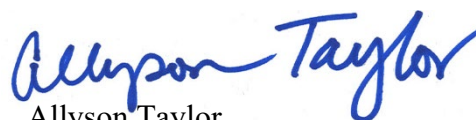
¹ At this time, no entity has applied for a license with the Department regarding this proposed leased premises.

² No such prohibition exists for the advertisement of distilled spirits or wine.

the prohibition on advertising to refer to the advertisement itself, not the business or building which contains the advertisement. In this instance, while the proposed facility would undoubtedly be within 100 feet of the school's property line, it is proposed to be 50,000 square feet in size. Most of the facility will not fall within that 100-foot boundary. Any advertisement of any malt beverage by trade name, trademark or in any other manner must not be within 100 feet from the abutting property line of the school.

The second part of the request pertains to restrictions on the days and times of the sale of alcoholic beverages. Pursuant to KRS 244.290(3) (distilled spirits and wine sales) and KRS 244.480(2) (malt beverage sales), the sale of alcoholic beverages is prohibited between midnight and 6 a.m. or any time during the 24 hours on a Sunday. However, local governments have the authority to permit alcohol sales beyond midnight and on Sundays by ordinance under KRS 244.290(4) and KRS 244.480(4). Sunday sales are permitted for those business types, and at the times, permitted by any local ordinance. Pursuant to KRS 243.050(2), if permitted by local ordinance, a licensee must obtain a Sunday retail drink license in order to sell drinks of distilled spirits and wine on Sunday. There are no additional statutory or regulatory restrictions on the date and time the proposed business could sell alcohol due to its location.

For the aforementioned reasons, the Department opines that no statutory or regulatory provision in Kentucky law prohibits the sale of alcohol on property owned by a school district and leased to a third party. The sale of alcohol between 12:00 a.m. and 6:00 a.m. and on Sundays is prohibited unless permitted by local ordinance. Advertisements of malt beverages must be kept more than 100 feet from the property line of the school. If the proposed business is issued a license, it must comply with these restrictions.



Allyson Taylor
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Department of Alcoholic Beverage Control