



**REFERENCE GUIDE FOR
CONSUMPTION OF ALCOHOLIC
LIQUOR ON UNLICENSED
PRIVATE PROPERTY**

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Changes made to this Reference Book since the previous revision(s) have been highlighted with a yellow background. Please report errors, omissions or suggestions for improvement to this handbook to the Division of Alcoholic Beverage Control by telephone at 785-296-7015 or by email to KDOR_abc.email@.ks.gov.

Serving and Consumption on Unlicensed Private Property

K.S.A. 41-719(b) addresses consumption of alcoholic liquor on private property:

(b) No person shall drink or consume alcoholic liquor on private property except:

- (1) on premises where the sale of liquor by the individual drink is authorized by the Club and Drinking Establishment Act;
- (2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place;
- (3) in a lodging room of any hotel, motel, or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place;
- (4) in a private dining room of a hotel, motel, or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place; or
- (5) on the premises of a farm winery or microbrewery

(6) on the premises of an unlicensed business by a patron* of such business as authorized by the unlicensed business, with the following restrictions:

- The alcoholic liquor must be in the personal possession of the patron and is not sold, offered for sale or given away by the owner of the unlicensed business or any employee thereof;
- Possession and consumption of the alcoholic liquor is not allowed on the unlicensed premises between the hours of 12 a.m. (midnight) and 9 a.m.;
- The unlicensed business, or any owner thereof, shall not have had a license issued under either the Kansas Liquor Control Act or the Club and Drinking Establishment Act revoked for any reason;
- No charge of any sort may be made by the unlicensed business for the privilege of possessing or consuming alcoholic liquor on the premises, or for mere admission onto the premises;

*"Patron" is defined as a natural person who is a customer or guest of the unlicensed business. [K.S.A. 41-719(i)]

Definition of "Guest"

The term "guest" is not defined within either the Liquor Control Act or the Club or the Drinking Establishment Act. Kansas Attorney General Opinion No. 1993-35 issued on March 17, 1993 defined "guest" as:

"a person to whom a private or personal invitation, as opposed to a public announcement, has been extended for hospitality or entertainment."

It is ABC's opinion that paying customers or patrons of any kind of business establishment are not "guests" as the term was used in K.S.A. 41-719(b).

Sale of Alcoholic Liquor

K.S.A. 41-803 prohibits "open saloons." Specifically, it prohibits the sale of liquor by the drink except as specifically authorized by the Club and Drinking Establishment Act.

Attorney General Opinion 2007-3, dated Jan. 29, 2007, held that a sale of alcoholic liquor occurs when an entry fee, cover charge, or ticket fee is required to enter an event and alcoholic liquor is served to the attendees. Specifically, the opinion found:

Essentially, a "sale" of alcoholic liquor occurs whenever a person's conveyance of any consideration results in the person being provided alcoholic liquor.

The legislature, in response to this opinion, amended K.S.A. 41-104. Subsection (h) provides that the serving of complimentary drinks at fundraising events conducted by charitable organizations and political committees does not constitute a sale.

The legislature did not exempt any other activities involving "free" alcoholic liquor from the findings of the Attorney General in Opinion number 2007-3.

It is ABC's opinion that the act by any type of business which is open to the public of providing alcoholic liquor free of charge to its paying customers or patrons constitutes a sale and is therefore illegal, except on premises holding a club or drinking establishment license or temporary permit, or premises which are the site of a catered event.

When the Consumption of Alcoholic Liquor on Private Property is Allowed

The serving and consumption of alcoholic liquor is legal on unlicensed private property when all of the following conditions are met:

- the alcoholic liquor is consumed by the owner or lessee of the property and guests of the owner or lessee. [Subsection (b)(2) of K.S.A. 41-719] See definition of "guest" above.

The "and" in the statute was interpreted by the Director on Dec. 6, 2007 as actually meaning "and/or" so that it covers any of the following situations:

Y only the owner or lessee is consuming

Y only the "guests" are consuming

Y both the owner or lessee and the "guests" are consuming.

- no charge is made for the mixing or serving of the alcoholic liquor and or for any substance mixed with the alcoholic liquor. [Subsection (b)(2) of K.S.A. 41-719] The statute makes no mention of who furnished the alcoholic liquor or how or where it was acquired.
- No sale of alcoholic liquor takes place, either directly or indirectly. See "Sale of alcoholic liquor" section above.
- the alcoholic liquor is not furnished to a person under the age of 21. [K.S.A. 21-3610]