

ATTORNEY GENERAL

In summary, we have concluded that the game proposed to be conducted on cable television is lawful except to the extent noted.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: BERTRAM P. GOLTZ, JR.
Deputy Attorney General

July 19, 1978

JOSEPH H. LERNER, *Director*
Division of Alcoholic Beverage Control
Newark International Plaza
U.S. Route 1-9 (Southbound)
P.O. Box 2039
Newark, New Jersey 07114

FORMAL OPINION NO. 10—1978

Dear Director Lerner:

You have requested an opinion as to whether holders of State Beverage Distributor's licenses (hereafter S.B.D.'s) may sell malt alcoholic beverages in original containers for off-premises consumption on Sundays and weekdays during the same hours as the sale of alcoholic beverages for on-premises consumption is permissible. It is our opinion that S.B.D. licensees may sell malt alcoholic beverages under these circumstances.

For many years the permissible hours for retail sale of alcoholic beverages for off-premises consumption were governed by a rule of the Division of Alcoholic Beverage Control. N.J.A.C. 13:2-36.1 prohibited sales on Sunday and limited sales on other days to the hours of 9:00 a.m. to 10:00 p.m. In 1971 the Legislature enacted N.J.S.A. 33:1-40.3 which provides as follows:

Whenever the sale of alcoholic beverages for consumption on the premises and off the premises or either thereof is authorized in any municipality by ordinance or rule or regulation of the Division of Alcoholic Beverage Control, by the holder of a retail consumption or retail distribution license, such ordinance or rule shall authorize the sale of malt alcoholic beverage[s] in original bottle or can containers for consumption off the premises on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises is permitted and authorized in said municipality.

All parts of ordinances and regulations of the Director of the Division of Alcoholic Beverage Control inconsistent with the provisions of this act are superseded to the extent of such inconsistency.

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Therefore, the sale of malt alcoholic beverages for off-premises consumption is permitted during the same days and hours during which municipalities permit the sale of alcoholic beverages for on-premises consumption.

In the resolution of the question of whether the statute includes an S.B.D. licensee,¹ it is significant to note that its literal terms do not restrict its application to any particular class of licensee. The operative language states, without qualification, that under the circumstances described in the statute, a municipal ordinance or Division rule "shall authorize the sale of malt alcoholic beverages in original . . . containers for consumption off the premises on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises . . ." While the prefatory language refers to "retail consumption or retail distribution license," it merely describes the contingency which must exist before a right to make such sales arises. It does not place a limitation on the particular class of licensee permitted to make the sale. In the event the Legislature intended such a limitation, it could have stated a qualification in express terms. An additional qualification which the Legislature has failed to include in its own enactment should not be inferred by indirection. *Crastel v. Board of Commissioners, Newark*, 9 N.J. 225, 230 (1952). See also *State v. Congden*, 76 N.J. Super. 493, 501-502 (App. Div. 1962). It is therefore clear that whenever a rule or ordinance permits the sale of alcoholic beverages for on or off-premises consumption by a retail consumption or distribution licensee, then any duly licensed person may sell malt alcoholic beverages for off-premises consumption.

This construction of the plain terms of the statute is reinforced by the underlying legislative purpose. The statement accompanying the bill (S2108) and the Governor's statement indicate it was designed to provide additional convenience to the general public in the purchase of malt beverages. Significantly, both statements make reference to "package stores," a term as readily applicable to S.B.D. licensees as to other distribution licensees. It is therefore apparent that the principal legislative purpose was simply to increase public convenience in the purchase of malt alcoholic beverages. A construction of the statute which would exclude S.B.D. licensees from its terms would be inconsistent with this expressed legislative history.

Furthermore, it would be anomalous to interpret the statute to limit S.B.D. licensees in the sale of malt alcoholic beverages to different hours than any other retailer who is privileged to make package sales. S.B.D.'s historically have been subject to the same hour restrictions as other licensees engaged in comparable sales. A.B.C. Bulletin 380, Item 10. It cannot be assumed that the Legislature intended to substantially depart from this administrative practice and place more onerous hourly restrictions on this small class of licensees. A statute should be interpreted to avoid unreasonable or absurd consequences. *Davis v. Heil*, 132 N.J. Super.

1. S.B.D. licensees are entitled to sell "unchilled, brewed, malt alcoholic beverages in original containers only, in quantities of not less than 144 fluid ounces," both to retail licensees, at wholesale, and to the general public at retail, for off-premises consumption. See N.J.S.A. 33:1-11(2c).

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283, 293 (App. Div. 1975); *In re The Summit and Elizabeth Trust Co.*, 111 N.J. Super. 154, 168 (App. Div. 1970). Therefore, we conclude that it was the legislative intent that malt alcoholic beverages in original containers be more readily available to the general public by extending the hours and days of sale for all licensees, including S.B.D. licensees.

Parenthetically, assuming the prefatory language of the Act, which refers to the "holder of a retail consumption or retail distribution license," is deemed to be a condition of the authority to make the sale under the statute, an S.B.D. licensee would in any event be encompassed by its terms. The Division of Alcoholic Beverage Control has concluded that an S.B.D. is "in part, a retail licensee." *Re Berkeley Beverage Co.*, A.B.C. Bulletin 331, Item 4. That it is a distribution license is manifested by its name and the nature of the privileges granted by it. N.J.S.A. 33:1-11(2)(c). Also, the Division of Alcoholic Beverage Control has consistently held that retail sales by such licensees are subject to the same regulations which govern retail sales of package goods by other retail distribution licensees. *See Re Riverside Distributors*, A.B.C. Bulletin 611, Item 11; A.B.C. Bulletin 580, Item 10; *Re K & O Liquor Store*, A.B.C. Bulletin 201, Item 7. If the Legislature intended to depart from this administrative practice of maintaining comparability between these classes of licensees, it could have used the specific statutory designation of the kind of license for which it intended the privilege of selling during extended hours to be applicable.² The use of the more general terms "retail consumption" and "retail distribution licensee" is a compelling indication that the presumed legislative intent was to encompass all licensees privileged to make retail sales. Therefore, an S.B.D. licensee should be considered a retail distribution licensee as that term is employed in the statute.

In conclusion, you are advised that under the provisions of N.J.S.A. 33:1-40.3 State Beverage Distributor's licensees may sell malt alcoholic beverages in original containers for off-premises consumption on Sundays and weekdays during the same hours as the sale of alcoholic beverages for on-premises consumption is permitted.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MART VAARSI
Deputy Attorney General

2. For example, it could have limited the privileged to "Class C" licenses or to "plenary retail consumption," "seasonal retail consumption," "plenary retail distribution" or "limited retail distribution" licensees. *See* N.J.S.A. 33:1-12. It is evident from other portions of the Alcoholic Beverage law that whenever the Legislature intends for a provision to apply only to a specific type or class of license, it invariably specifies the type or class by its exact statutory designation. *See, e.g.*, N.J.S.A. 33:1-12.14, 15, 17, 23, 25, 26, 27, 28, 29 and 39; N.J.S.A. 33:1-17; N.J.S.A. 33:1-19.1; N.J.S.A. 33:1-23 (c. 246, L. 1977).
