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NO.
STATE OF NEBRASKA
OFFICIAL
JUN 30 1997
DEPT. OF JUSTICE

DATE: June 23, 1997

SUBJECT: Outdoor Addition to Licensed Premises

REQUESTED BY: Forrest D. Chapman, Executive Director
Nebraska Liquor Commission

WRITTEN BY: Don Stenberg, Attorney General
Marie C. Pawol, Assistant Attorney General

We are in receipt of your June 5, 1997, request for an Attorney General's opinion regarding whether a "premises may be licensed under the Liquor Control Act if the licensee has a lease on the premises which permits ingress to and egress from the premises by third parties." Upon further clarification of this request, we understand that the Commission is reviewing a request for the expansion of an existing license to include an adjacent outdoor area. This outdoor area is described as an enclosed courtyard that is also accessible to other adjacent businesses and their patrons. The local governing body has given its approval to the requested addition to the licensed premises.

Nothing contained in the Nebraska Liquor Control Act precludes licensure of a clearly specified area, whether outdoors or indoors, soley because it may be accessible by others, to include adjoining business owners, their employees or their customers. Neb. Rev. Stat. § 53-125(12) (Cum. Supp. 1996) requires that the licensee either own the premises for which a license is sought or have a lease or combination of leases on such premises for the full period for which the license is to be issued. However, this provision does not require that the licensee's lease be exclusive, preventing reasonable easements by other businesses and their patrons, or use by other third parties.

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Rule 6.019.01V of the Nebraska Liquor Control Commission further clarifies criteria for licensing outdoor areas. First, the area may either be attached or not physically attached to the licensed structure. Second, the licensee shall be responsible for, and properly supervise, the area. Third, a retainer (fence, wall, or hedgerow, etc.) must separate the outdoor area and prevent uncontrolled entrance or exit from the outdoor area or easy access to beverages within the licensed area by persons outside the area. Last, all fire, health and liquor standards must be complied with.

According to the licensee's application, the outdoor area in question is enclosed by a fence and other adjacent buildings. There are identifiable entrances and exits. In view of the foregoing, there is no "uncontrolled" ingress or egress to the proposed licensed addition. Therefore, nothing contained in Commission Rule 6.019.01V prevents approval of this proposed addition.

Of course, the licensee is still responsible for ensuring that all provisions of the Nebraska Liquor Control Act are adhered to within the area of the licensed premises, as noted in Rule 6.019.01V. See also, Commission Rule 2.001.01: "The licensee shall, at all times, be responsible for the licensed premises and for the control, sale and dispensing of alcoholic liquors permitted by the license."

Sincerely,

DON STENBERG
Attorney General

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Approved By:

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