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OFFICIAL
JUN 5 1992
DEPT. OF JUSTICE

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DEPUTY ATTORNEYS GENERAL

DATE: June 1, 1992

SUBJECT: Interpretation of Neb.Rev.Stat. §53-180.07(2)

REQUESTED BY: Ron Tussing, Colonel Superintendent
Nebraska State Patrol

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

You have inquired whether Neb.Rev.Stat. §53-180.07(2) provides an absolute defense to a liquor licensee charged with having sold alcohol to a minor who made the purchase at the request of a law enforcement officer. The answer is no.

§53-180.07, in its entirety, states:

53-180.07. Minors; licensee charged with sale; defense. In any prosecution of or any proceeding against any licensee charged with having made a sale to a minor, proof of the following shall be an absolute defense to the charge:

(1)(a) The purchaser falsely represented in writing and supported with other documentary proof that he or she was of legal age to purchase alcoholic liquor;

(b) The appearance of such purchaser was such that an ordinary and prudent person would believe that such appearance conformed to any documentary description of appearance presented by the purchaser; and

(c) The sale was made in good faith, in reliance upon the written representation, other documentary evidence, and the appearance of the purchaser, and in the belief the purchaser was of legal age to make such purchase; or

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> (2) The sale was made with the knowledge of and in cooperation with a duly authorized law enforcement officer.

[Emphasis added]. There is a clear distinction between the terms "sale" and "purchase" and "purchaser" given the juxtaposition of these words in the statute. The defense applies, therefore, only in those instances in which the licensee acted with the knowledge of and in cooperation with a duly authorized law enforcement officer in making a sale of alcohol to a minor. Conversely, the defense has no application in those instances in which a minor, acting with the knowledge of and in cooperation with law enforcement officials, makes a purchase of alcohol from a licensee.

The definitional term of the Nebraska Liquor Control Act for "sale", contained in §53-103(17) provides that:

> Sale shall mean any transfer, exchange, or barter in any manner or by any means for a consideration and shall include any sale made by any person, whether principal, proprietor, agent, servant, or employee.

[Emphasis added]. There is no corresponding definitional term for "purchase." Although it might be argued that this definition requires a broader interpretation of what constitutes a sale, §53-103 also provides that such statutorily defined terms, "[f]or purposes of the Nebraska Liquor Control Act" control "unless the context otherwise requires. . ." The context of §53-180.07 clearly mandates a distinction between a sale and a purchase in determining whether the defense applies.

The legislative history supports the interpretation that the defense was intended to apply to those arrangements entered into by liquor licensees and police in an effort to arrest minors attempting to purchase liquor. The language under question first came into being as a result of LB 1012 in the 1969 legislative session. It was introduced by Senator Terry Carpenter who, in the April 14, 1969 Introducer's Statement of Purpose, declared:

> LB1012 has as its purpose the requiring of liquor retailers to keep a record of sales to those under the age of 20 and also to permit them, upon request by duly constituted police officers, to enter into a procedure in order to arrest those who are under the age of 20, for the purchase of liquors, including beer.

On the other hand, there is absolutely no reference in the legislative history to indicate that the defense could be raised by a licensee who acted without the cooperation of police in making an illegal sale of alcohol. Further, the plain meaning of the statute does not support such a result.

Sincerely,

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