STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

NO. 950666
STATE OF NEBRASKA
OFFICIAL
AUG 24 1995
DEPT. OF JUSTICE

DATE: August 24, 1995

SUBJECT: Hotel Mini-Bars

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

WRITTEN BY: Don Stenberg, Attorney General
Laurie Smith Camp, Deputy Attorney General

You have asked whether Nebraska's Liquor Control Act permits the use of "mini-bars" in hotel or motel rooms.

We conclude that although the Nebraska Liquor Control Act does not prohibit the use of such mini-bars, the licensee would be responsible for violations of the Liquor Control Act and the Rules and Regulations of the Commission occurring on the licensed premises. So, it is questionable whether an applicant for a license which would include mini-bars could demonstrate adequate control over the licensed premises under Neb. Rev. Stat. § 53-132(2) (1984).

First, the commission is referred to our opinion No. 93034 of April 30, 1993, in which we found that Nebraska's statutes as they appear in the 1984 reissue continue to govern the process for granting or denying liquor license applications. Neb. Rev. Stat. § 53-132 (1984) provides in part:

> (2) A retail license or bottle club license shall be issued to any qualified applicant if it is found by the commission that (a) the applicant is fit, willing, and able to provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Lauren Lee Hill
Jay C. Hinsley
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Ronald D. Moravec
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Alan E. Pedersen
Paul N. Potadle
Hobert B. Rupe
James D. Smith
James H. Spears
Mark D. Starr
Timothy J. Texel
John R. Thompson
Barry Wald
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper

> all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensed premises can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

Second, our discussion is confined to the potential use of mini-bars in guest rooms within "clubs" or "hotels" as defined in Neb. Rev. Stat. § 53-103(19) and (20) (Cum. Supp. 1994). This is because Neb. Rev. Stat. § 53-178 (1993) prohibits the retail sale of alcohol in any other premises which lead to rooms used for public dwelling or lodging purposes.

Nebraska's Liquor Control Act contains no specific prohibition against mini-bars in guest rooms in hotels or clubs.

If a hotel or club were to seek a retail liquor license for premises including guest rooms equipped with mini-bars, however, it is questionable whether the applicant could demonstrate that it would have sufficient control over the premises to ensure compliance with the Nebraska Liquor Control Act and the rules and regulations of the Commission. This would be a question for the Commission to decide.

For example, the licensee would need to ensure that minors would not be allowed to possess alcohol within the licensed premises [Neb. Rev. Stat. § 53-180 (1993), NAC 237 LCC 6.019.01B]; that no open containers of alcohol would be permitted to remain on the premises after specified hours [Neb. Rev. Stat. § 53-179(3) (1993), NAC 237 LCC 6.019.01D]; that no alcoholic liquor would be allowed to be removed from the premises in open containers [NAC 237 LCC 6.019.01H]; that law enforcement officers would be permitted access to the premises upon demand [NAC 237 LCC 6.019.01G]; and that intoxicated persons would not be allowed to possess alcohol on the premises [NAC 237 LCC 6.019.01N].

Hotels or clubs now accept similar responsibilities when they obtain licenses for guest rooms to permit the sale of alcoholic beverages by room service. With room service sales, the licensee may control the time of delivery of the liquor and may ensure that the sale is not made to a minor. Once the door to the room is closed, however, the licensee relinquishes supervision of the guest and control of the alcohol within the licensed premises.

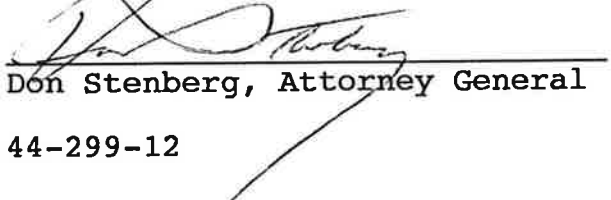
We understand that you are conducting a survey of states which allow mini-bars, to determine what legislation they have enacted and what rules their liquor commissions have adopted to permit mini-bars without exposing licensees to the risk of sanctions for violations within guest rooms over which they have little supervision or control. Although Nebraska statutes do not prohibit the use of mini-bars, we conclude that legislation would be needed if a licensee were to be relieved of responsibility for violations of liquor laws and regulations which might occur within guest rooms on the licensed premises.

Sincerely,

DON STENBERG
Attorney General

Laurie Smith Camp
Deputy Attorney General

Approved by:



Don Stenberg, Attorney General

44-299-12