



K A N S A S

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DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

KATHLEEN SEBELIUS, GOVERNOR

August 27, 2003

POLICY MEMORANDUM 2003 – 6

Subject: Guidelines on Industry Member Support of Golf Tournaments and other Fund Raising Events

1. Purpose: The purpose of this memorandum is to provide clarification of the statutes and regulations as they pertain to industry members providing support to golf tournaments or other fund raising events.

2. Applicability: All industry members and retailers. For the purposes of this policy memorandum, the term “retailers” includes retail liquor stores, cereal malt beverage retailers, clubs, drinking establishments, caterers and hotels; and “industry members” includes any distributor, supplier, manufacturer or any agent, salesperson or representative thereof.

3. Discussion: The ABC recently responded to questions concerning industry member support to retailer sponsored golf tournaments through an ABC NOTICE published on April 14, 2003. **This Policy Memo supercedes the ABC Notice and provides guidance to all Kansas licensed or permitted industry members and retailers.** Although the focus of this Policy Memo is on golf tournaments, other fund raising events run in a similar manner must also follow these guidelines.

a. Industry Member Support to **Retailer** Sponsored Events.

(1) Industry members may NOT provide monetary donations, consumer advertising specialties and/or product donations to these events. Industry members may support the events through payment of participation fees provided the fees are not in excess of those charged to other participants in these events. See Table 1 for additional information.

(2) Industry members’ sponsorship or support of retailers’ golf tournaments or other fund raising events – by providing cash, products, advertising or consumer advertising specialties, or participation fees in excess of those charged to other participants – violates several provisions of the Kansas Statutes and Administrative Regulations. The key provisions that support this conclusion – with emphasis provided in italics – are as follows:

Subject: Guidelines on Industry Member Support of Golf Tournaments and other Retailer Sponsored Events
August 27, 2003

K.S.A. 41-702. Gifts and credit from manufacturer or distributor prohibited. (a) Except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto, *no licensed retailer, club, drinking establishment or caterer*, or any officer, associate, member, representative or agent thereof, shall accept, receive or borrow *money or anything else of value*, or accept or receive credit, directly or indirectly, from: (1) Any manufacturer or distributor; (2) any person connected with, in any way representing or a member of the family of a manufacturer or distributor; (3) any stockholders in a manufacturer or distributor; or (4) any officer, manager, agent or representative of a manufacturer or distributor.

(b) Except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto, *no manufacturer or distributor* shall give or lend *money or anything of value* or otherwise loan or extend credit, directly or indirectly, to any retailer licensed under this act or under K.S.A. 41-2702 and amendments thereto, or to any licensed club, drinking establishment or caterer, or to the manager, representative, agent, officer or director thereof.

K.S.A. 41-703. Gifts, loans and interest in customer's business by manufacturer or distributor prohibited, exceptions. (d) (1) *A manufacturer or distributor may furnish things of value* to a licensee under the club and drinking establishment act or to a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto *to the extent permitted by rules and regulations* adopted by the secretary pursuant to subsection (e).

K.A.R. 14-14-11. Prohibited conduct of licensees. (a) *No manufacturer* of alcoholic liquor or cereal malt beverage holding a manufacturer's license issued by the director, manufacturer of alcoholic liquor or cereal malt beverage outside of this state manufacturing alcoholic liquor or cereal malt beverage for sale and distribution within the state, *licensed distributor* within the state, or their agents, salesmen or representatives *shall offer, give or furnish, directly or indirectly*, any gifts, prizes, coupons, premiums, rebates, quantity discounts, entertainment, decorations, or the services of any employee, including errands and administrative services, or *any other inducement or thing of value of any kind to a licensed retailer, club, drinking establishment or caterer* or to an applicant for a retailer, club, drinking establishment or caterer license *except as provided in Article 10.*

(3) K.A.R. Article 10 – Trade Practices, in turn, fails to include any "exceptions" within which something like an industry member's contributions to a retailer's golf tournament or other fund raising events would fall. Rather, the exceptions in Article 10 allow distributors to supply only such things as coil cleaning service (K.A.R. 14-10-8) and consumer advertising specialties (14-10-10). Therefore, the broad prohibitions of K.S.A. 41-702 prevail, and industry members

Subject: Guidelines on Industry Member Support of Golf Tournaments and other Retailer Sponsored Events
August 27, 2003

are prohibited from sponsoring or making any financial or other contributions to golf tournaments or other fund raising events held by retail licensees.

(4) Nothing in this Policy Memo should be construed as prohibiting the mere participation of industry members or their employees in retailers' golf tournaments or similar fund raising events. A violation would occur only when industry members or their employees provide cash, products, advertising, consumer advertising specialties, or participation fees in excess of those charged to other participants, in support of such golf tournaments.

b. Industry Member Support to Charities, Not-for-profit Organizations or Association Sponsored Events or Fund Raisers with **no** Retailer Involvement. Industry members may support these events through monetary donations, consumer advertising specialties and participation fees. They may not provide product donations. See Table 1 for additional information.

c. Industry Member Support to Charities, Not-for-profit Organizations or Association Sponsored Events or Fund Raisers with Retailer Involvement other than as an attendee/participant. Industry members may provide monetary donations only to the charity. Donations may NOT be made through the event sponsor or any other party. Additionally, consumer advertising specialties may only be provided directly to the charity. Product donations may not be provided to these events. However, industry members may support them through participation fees, provided the fees are not in excess of those charged to other participants in these events. See Table 1 for additional information.

d. Industry Member Support to Liquor Association Sponsored Event. Industry members may provide monetary donations to liquor association sponsored events provided that none of the benefits of the donations flow directly to individual retailers. For example, retailer participation fees or other costs may not be subsidized by industry member donations. Industry members also may: 1) provide consumer advertising specialties, 2) conduct industry seminars in accordance with applicable statutes and regulations, and 3) pay participation fees to attend the events so long as the participation fees are in accordance with the previously agreed upon policy for such contributions between ABC, industry members and liquor associations. See Table 1 for additional information.

e. Additional Clarifying Information.

(1) Nothing in this Policy Memo should be construed as preventing an industry member from providing monetary donations directly to any charity, not-for-profit organization, association or event that is not involved with the retail sale of alcoholic liquors or cereal malt beverages or sponsored by a retailer. Product donations directly from the industry member are not lawful under any of the circumstances covered in this policy memo.

(2) Please see Table 1 below for an overview of the situations discussed in this policy memorandum.

Subject: Guidelines on Industry Member Support of Golf Tournaments and other Retailer Sponsored Events
August 27, 2003

Table 1: Industry Member Support to Golf Tournaments and Other Similar Events

Type of Event Support Allowed	Retailer Sponsored Event	Charity or Sponsored Event with NO Retailer Involvement	Charity or Sponsored Event with Retailer Involvement	Liquor Association Sponsored Event Involvement
Monetary Donations	No	Yes	Conditional (2)	Conditional (3)
Product Donations	No	No	No	Conditional (4)
Consumer Advertising Specialty Donations	No	Yes	Conditional (2)	Yes
Participation Contributions or Fees	Conditional (1)	Yes	Conditional (1)	Conditional (5)

Conditions

- (1) Provided the contributions are participation fees that are not in excess of those charged to other participants in such events.
- (2) In the case of sponsored events with retailer involvement other than as an attendee/participant, monetary or CAS donations may only be provided directly to a charity. Donations may not be made through the event sponsor or any other party.
- (3) Industry members may provide monetary donations to liquor association sponsored events provided that none of the benefits of the donations flow directly to individual retailers. For example, retailer participation fees may not be subsidized by industry member donations.
- (4) Products may be provided via authorized industry seminars scheduled in conjunction with association sponsored events.
- (5) Provided contributions are in accordance with the previously agreed upon policy for such contributions between ABC, industry members and liquor associations.

Subject: Guidelines on Industry Member Support of Golf Tournaments and other Retailer Sponsored Events
August 27, 2003

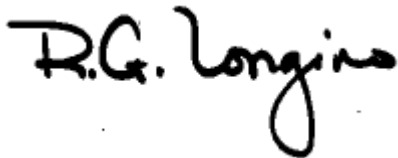
4. Additional Comments:

a. Failure to comply with the applicable statutes, regulations and/or this policy memorandum, may result in administrative action for violation of the liquor laws.

b. Agents will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.

5. Clarification of Policy: All requests for clarification of this policy should be directed *in writing* to this office via mail, fax, or email.

6. Effective date of this Policy: This policy is effective from the date of signature until further notice.

A handwritten signature in black ink that reads "R.G. Longino". The signature is written in a cursive style with a large, looped 'o' at the end.

R.G. Longino

cc: Assistant Attorney General
Chief of Enforcement
Licensing Supervisor
Compliance Supervisor
Administration Supervisor
Enforcement Agents

