OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

May 5, 2004

Via fax numbe

Re: LR-04-074- Advertising of Beer Sampling Event

Dea

By telephone call of May 4, 2004, you requested clarification of the policy of the Oklahoma Tax Commission regarding the radio advertising of a beer sampling event that is planned for a future date in Oklahoma. You requested clarification of whether the promotion of the event prior to its occurrence and not just contemporaneously with the event is authorized in Oklahoma. You further indicated that you had spoken with Jerry Kirton of the Oklahoma Tax Commission who had advised you to contact this office regarding a letter ruling.

Based on our understanding of the events leading up to your inquiry, it appears as though the primary issues under Oklahoma law do not relate to the pre-promotion of the event by the radio station but are with who is financing the event, who is paying for the advertising, and who is receiving a benefit from the event.

Oklahoma Statutes Title 37, Section 231-Unlawful acts, list prohibited acts relating to the subsidization of retail dealers in low-point beer. Although there are no Oklahoma cases construing this statute, in the industry this is commonly referred to as a "tied house" statute. Through this statute the Legislature intended to prevent the integration of retail and wholesale outlets and to isolate the retail dealer from financial or business obligations to a wholesaler, brewer, etc. Section 231 A., subsections 3, 4 and 9 provide as follows:

A. It shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a manufacturer, importer, or wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of low-point beer, individually or through or by affiliates, subsidiaries, associates, agents, or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

   3. Furnish, give, rent, lend, or sell to a retail dealer in low-point beer any equipment, fixture, outside signs, supplies, or other things having a real or substantial value. Provided that this paragraph shall not be construed to prohibit the furnishing of ***normal point of purchase advertising*** matter to such retail dealer in low-point beer;

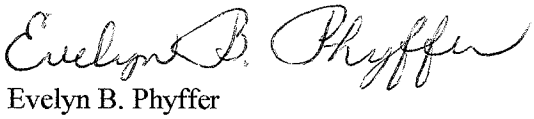
4. Pay or credit a retail dealer in low-point beer for any advertising display or distribution service;

9. Use or employ ***any device or scheme*** to subsidize in any manner any retail dealer in low-point beer; ...(Emphasis added.)

Without answers to the questions posed herein, the Commission cannot give you a specific answer regarding each and every event, however, the Commission has always responded on the side of withholding approval of such advertising plans when they are manufacturer, wholesaler, importer, etc. sponsored. Therefore, promotion of an event is not the determining factor of the application of 37 O.S. 231, but the facts underlying the event.

Please find attached Title 37, O.S. Section 231 in its entirety. If you have additional questions concerning this matter or if I can be of further assistance, please contact me. This response applies only to the circumstances discussed in your telephone request of May 4, 2004. Pursuant to Commission Rule 710:1-3-73(e), this Letter ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Sincerely,
OKLAHOMA TAX COMMISSION



Evelyn B. Phyffer
Tax Policy Analyst

Enc.

Cc: Jerry Kirton, Administrator
Taxpayer Assistance Division