

INTOXICATING LIQUOR: Supervisor may disregard corporate fiction and refuse license to president and principal holder of stock, when corporation's license had been previously revoked.

January 19, 1938.

Mr. Wallace I. Bowers,
Chief Clerk,
Department of Liquor Control,
Jefferson City, Missouri.



Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"Please find enclosed, letters of December 3rd and 6th from Mr. D. G. Hamilton with copies of our replies of December 4th and 8th thereto attached.

"Please be advised that we request your opinion as to whether or not Mr. Hamilton can qualify for the permits requested.

"We would appreciate your returning the enclosed correspondence with your reply."

In rendering this opinion we are assuming the following facts to be true: That Mr. D. G. Hamilton, who now is applying for a liquor license in his own name, was prior to the liquidation of the Hamilton Wholesale Drug Company, the president of said company; that he was also the manager and had full power and discretion to handle all important matters pertaining to the operation of said business. We are informed that while this company was incorporated Mr. Hamilton owned practically all of the stock of said company. On November 12, 1935, the liquor license of the Hamilton Wholesale Drug Company was revoked by the Supervisor of Liquor Control. Subsequent to this

and on June 30, 1936, said company was liquidated and it is no longer in existence. The question now to be determined is whether or not Mr. Hamilton, who was formerly the president of said company, may obtain a liquor license in his own name.

The whole question depends on whether or not the license under which the Hamilton Wholesale Drug Company was operating prior to its revocation could be construed to in reality be the license of Mr. D. G. Hamilton.

Section 27, Laws of Missouri, 1937, page 533, specifically prohibits any person obtaining a license or permit whose license as such dealer has been revoked:

" * * * and no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, * * *."

Section 43a, Laws of Missouri, Extra Session, 1933-1934, page 91, defines the word "person" as follows:

"The term 'person' as used in this act shall mean and include any individual, association, joint stock company, syndicate, co-partnership, corporation, receiver, trustee, conservator, or other officer appointed by any State or Federal Court."

Section 27, supra, further prohibits the licensing of any corporation unless the managing officer of such corporation be of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village:

" * * * nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village; * * *"

From the foregoing, there is no doubt but what an organization such as the Hamilton Wholesale Drug Company, for

the purpose of the Liquor Control Act, was considered a person. The Hamilton Wholesale Drug Company, in order to obtain a license, was compelled to comply with Section 27, supra, which required the managing officer to be of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village.

In construing statutory provisions, the fundamental rule is that the whole act should be construed if same can possibly harmonize. Another controlling rule of construction to be remembered is to determine the intention of the Legislature.

Since Section 43a, supra, defines a person to be also a corporation, for the purpose of this act, a corporation cannot be licensed absent the managing officer of such corporation complying with the qualifications as contained in Section 27, supra, and no person shall be granted a license or permit hereunder whose license as such dealer has been revoked.

We are of the opinion that to permit the president of a corporation whose license as a corporation was revoked and subsequent thereto the corporation was liquidated, to then be licensed in his own name, when said officer of the corporation was not only president but owned in his own name practically all the stock of said corporation, would, in effect, be issuing a license to a party whose license had been revoked, which would be in violation of Section 27, supra. It is not sound law to permit something to be done indirectly that cannot be done directly.

In Fletcher's Cyclopedia on Corporations, Vol. 1, page 134, Sec. 41, the following principle of law may be found:

"In previous sections the doctrine that a corporation is an 'entity' or a 'personality' has been discussed. It there appeared that the entity or personality of the corporation is, by some authorities, regarded as a fiction or abstraction, the real thing or being consisting of the collective or unitary body of members; while others regard the entity as the fact or thing to deal with. Notwithstanding the lack of agreement on these points, practically all authorities agree that under some circumstances in a particular case the

corporation may be disregarded as an intermediate between the ultimate person or persons or corporation and the adverse party; and should be disregarded in the interest of justice in such cases as fraud, contravention of law or contract, public wrong, or to work out the equities among members of the corporation internally and involving no rights of the public or third persons. There is a growing tendency of courts to do so. Cases which announce this general rule are cited below. A leading and much cited case puts it as follows: 'If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.'

"Another rule is that, when the corporation is the mere alter ego, or business conduit of a person, it may be disregarded."

In *Smith v. Moore*, 199 Fed. 689, 697, the court said:

"In the first place, while it is true that in general a corporation is a distinct entity from its stockholders, nevertheless, where an individual owns practically all of its stock and controls all of the operations of the corporation, they are, in proper cases, regarded by the courts as one and the same."

In *United States v. Milwaukee Refrigerator Transit Co.*, 142 Fed. 247, 255, the court said:

"If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient

reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."

In 157 Fed. 609, In re Rieger, Kapner & Altmark, the court said, l. c. 613:

"The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud."

In People v. Michigan Bell Telephone Co., 224 N. W. 438, 440, the court said:

"Where a corporation is so organized and controlled, and its affairs so conducted, as to make it a mere instrumentality or agent or adjunct of another corporation, its separate existence as a distinct corporate entity will be ignored, and the two corporations will be regarded in legal contemplation as one unit. In re Muncie Pulp Co. (C.C.A.) 139 F. 546; Interstate Telegraph Co. v. Baltimore & O. Telegraph Co. (C.C.) 51 F. 49; Wormser on Disregard of the Corp. Fiction, 54. When a corporation exists as a device to evade legal obligations, the courts, without regard to actual fraud, will disregard the entity theory. Higgins v. California Petroleum & Asphalt Co., 147 Cal. 363, 81 P. 1070; Brundred v. Rice, 49 Ohio St. 640, 32 N. E. 169, 34 Am. St. Rep. 589; Donovan v. Purtell, 216 Ill. 629, 75 N. E. 334, 1.L.R.A. (N.S.) 176."

A similar situation arose respecting the issuing of licenses to persons as dealers in motor vehicle fuels whose licenses had been revoked. In an opinion to Hon. Roy H. Cherry, State Inspector of Oils, under date of March 17, 1937, this

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office held the State Inspector had a right to disregard corporate fiction in refusing to grant application for dealer's license, a copy of which we are enclosing.

Therefore, in view of the above and foregoing, it is the opinion of this department that to license Mr. D. G. Hamilton to manufacture or wholesale intoxicating liquor would in fact be the same as issuing a license to a person whose license had previously been revoked by the Supervisor of Liquor Control, and would be in violation of the provisions of Section 27, supra.

Yours very truly,

AUBREY R. HAMMETT, Jr.,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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