

INTOXICATING LIQUOR: Liquor sold on licensed premises may be legally opened and consumed on other, separate adjacent premises owned by the licensee, and not described in license.

April 11, 1941 4/15

Honorable Sam T. Evans
Prosecuting Attorney
Daviness County
Gallatin, Missouri



Dear Sir:

This is in reply to your request for our opinion in your letter which is in the following terms:

"Charles Harrington of near Altamont, Mo., has license to sell intoxicating liquor by retail in original package in his filling station. He owns and operates a dance hall under a separate roof a few feet away. He permits his customers to open and consume the intoxicating liquor in dance hall which they buy at the filling station and tobacco store.

"Two or three weeks ago the Liquor Department agreed to secure an opinion from your office as to whether or not this is legal. It is my opinion that to permit his customers to consume the liquor in dance hall is unlawful, being in violation of law which prevents the consumption of intoxicating liquor on premises where purchased.

"I should like to have copy of opinion whenever it is prepared.

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"If for any reason your office has not been requested for an opinion, I should like to have an opinion from your office based upon the facts hereto attached. These facts are identical with the agreed statement of facts that the Liquor Department agreed to submit for an Attorney General's opinion."

The statement of facts attached thereto is as follows:

"That Charles I. Harrington was issued a liquor permit by the State of Missouri to sell whiskey and beer by the package on the following described premises:

"In the two story stucco building, with basement, the second story used for living quarters, the above building is 22 feet by 24 feet located on the Highway at the junction of Highways 69 and 6 one mile west of Altamont, Daviess County, Missouri; said Harrington also operates a dance hall just west of the above described two story building and ten feet west thereof; said dance hall is a separate building and is not connected in any manner with the two story building above described. He sells liquor from the two story building and permits it to be consumed in the dance hall.

"Is this a violation of the letter or the spirit of the liquor laws of Missouri, or is Harrington complying with the law?"

Section 4901, R. S. Mo. 1939 (a part of the Liquor Control Act) in part provides:

"Intoxicating liquor shall be sold at retail in the original package upon a license granted by the supervisor of liquor control, and said intoxicating liquor so sold shall not be consumed upon the premises where sold, nor the original package opened on said premises of the vendor, except as otherwise provided in this act. * * *"

The provision above quoted, that ". . . liquor so sold shall not be consumed upon the premises where sold, nor the original package opened on said premises of the vendor," (italics ours) means the premises described in the license - the premises upon which sales are licensed to be made. Section 4881, R. S. Mo. 1939, in part provides that "no person . . . shall sell intoxicating liquor in any other place than that designated in the license," In our opinion, the intent of the whole Liquor Control Act is that "premises" means "licensed premises". While the word "premises" has been variously defined, in use it generally refers to certain real property described in a legal instrument (Ballentine's Law Dictionary, page 1001). The instrument to which we look to ascertain what premises are involved in this matter is the liquor license, and application therefor. In practice the license describes the premiass described in the application. In the case of In Re Henry, 142 N.Y.S. 485, 1. c. 486, where the question was whether the premises of an applicant for a liquor license were within a prohibited proximity to certain other buildings, the court said:

"It may be assumed that the term 'premises' as used in the statute is broad enough to include land and buildings or either, if specified in the application, but the immediate question here involved

is whether the specification of premises in the particular application was intended to be broader than the saloon building, and inclusive of the whole tract of land, and it is to be solved along the usual lines of interpretation of written instruments. By the statute (section 15, subd. 3) the specification of the premises is not required to be by metes and bounds, or by other exact description. It is enough to supply 'such apt description as will reasonably indicate the locality thereof.' In the present application there certainly is no reference to respondent's entire tract or description of it as being the premises intended to be specified, and, on the other hand, there can be no doubt but that the premises in mind as the place of the intended traffic was to be a building. The reference to a particular room makes this certain. It would be lawful to sell liquors on respondent's tract at any place or building or location specified, if consented to by the requisite proportion of neighboring owners, and, having specified such place, it cannot be assumed that he proposes now, or secretly proposed then, to sell it at some other point on his tract, where, by the statute, it would be, for lack of consents, unlawful to do so. Matter of Keene v. Toole, 1 Liq. Tax R. 79. * * * * *

Later, in Pierse v. Zimmerman, 5 N.Y.S. (2nd) 703, 704, 255 App. Div. 708, it was ruled that the term "premises" in a similar provision of the New York Liquor Law means "a store and not a building."

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The fact that the holder of the license also owns the other premises where the package was opened and consumed, in our opinion does not affect this question. The dance hall, as stated in your letter, is in a separate building not physically connected with the building described in the liquor license. Said dance hall is not used as a part of the business of selling intoxicating liquor in the original package for consumption on other premises. The premises meant in the liquor law are those used in conducting the business licensed. In Orke v. McManus, 115 N. W. 580, l. c. 581, the Supreme Court of Iowa said:

"* * * The law prohibits the selling or drinking on the premises of the manufacturing establishment, not of the corporation owning or operating the plant, and, for this reason, the word 'premises' should be so limited in its meaning as to include no more than the buildings occupied by and the grounds used in connection with such establishment. As pointed out, the saloon was operated independently and apart from the brewery, and was not included within the premises of the manufacturing plant."

And, in State v. Almy, 79 Atl. 962, l. c. 964, 32 Rhode Island 415, it was ruled:

"* * * Therefore the words, 'The finding of any liquors enumerated in this section upon the premises of any retail druggist or apothecary,' apply to the finding of the same in the shop or store or other portion of the business premises of those persons.

"* * * * And if he, as a druggist or apothecary, has a shop or store wherein a druggist's license could operate, if

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he had one, those are his business premises; and, in case he has no such druggist's liquor license, those are the premises wherein he must not sell or keep for sale intoxicating liquor in prohibited quantities."

Since neither the liquor law nor a liquor license authorizes sales on all premises to which the licensee may have title or the right to possession, it necessarily follows that the limitations and prohibitions applicable to the licensed premises do not attach to other premises not licensed to which the licensee may have title.

Your letter states that the sales were made at and on the premises described in the license. Therefore, the sales are legal. Inasmuch as the opening and consumption of the package was done at a place other than the licensed premises, there is no violation in that respect either of the letter or the spirit of the liquor law.

CONCLUSION.

Intoxicating liquor sold on premises licensed for retail sale of such liquor in the original package for consumption on other premises, may legally be opened and consumed on other premises owned by such licensee, which other premises are not the premises described in the license, and consist of a separate building, though adjacent to said licensed premises. In the Liquor Control Act "premises" means premises described in the license.

Respectfully submitted,

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APPROVED:

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EH:CP