

LIQUOR:

Obstruction of 1/3 to 1/2 of windows
of tavern by curtains constitutes no
violation of Liquor Control Act.

INTOXICATING LIQUOR:

November 21, 1950

FILED

24

Honorable William Lee Dodd
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Sir:

This is in reply to your request for an opinion
which is as follows:

"The Rainbow Inn is a beer tavern
located in Ripley County, Missouri,
On the West side is located about
6 or 7 windows. The operator has
hung curtains on these windows which
partially obstruct or obscure the in-
terior of such room. They do not com-
pletely obstruct the view but do ob-
struct about 1/3 to 1/2 of the window.
Now under Sec. 4899 R.S. 1939 do the
above state of facts show a violation
of the law? The outside door has no
obstruction. Does the law mean the
entire interior must be obstructed
or obscure from public view? If this
is a violation does Sec. 4933 R.S.
1939 provide the punishment?

"Please give me a legal interpreta-
tion of Sec. 4899 R.S. 1939 as to the
meaning of 'obstructing or obscuring
the interior of such room from public
view'."

Section 4899, R.S. Mo. 1939, reads as follows:

"Nothing in this act shall be so con-
strued as to authorize the sale of in-
toxicating liquor in the original pack-
age, or at retail by the drink for con-
sumption on the premises where sold, in

Honorable William Lee Dodd

a place commonly known as a 'saloon', and no license shall be issued by any city council, board of aldermen or other authorities of any city in this state, nor by the supervisor of liquor control, for the sale of intoxicating liquor at retail by the drink for consumption on the premises where sold, in a place commonly known as a 'saloon', nor in any building or room where there are blinds, screens, swinging doors, curtains or any other thing in such building or room that will obstruct or obscure the interior of such room from public view. It shall also be unlawful for the holder of any license authorized by this act, for the sale of any intoxicating liquor at retail by the drink for consumption on the premises where sold, to keep or secrete, or to allow any other person to keep or secrete in or upon the premises described in such license, any intoxicating liquor, other than the kind of liquor expressly authorized to be sold by such license."

(Underscoring ours.)

Section 655, R.S. Mo. 1939, provides, in part, as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, * * *."

Webster's New International Dictionary, Second Edition, defines the word "obstruct" to mean: "To cut off the sight of (an object); shut out" and "obscure" is defined as: "Not readily seen" and is synonymous with "indistinct, shadowy". We are unable to find a case on

Honorable William Lee Dodd

all fours with the facts as outlined in your request. However, we find an interpretation of the law taken by the General Sessions of Delaware in the case of State vs. McCann, 90 Atl. 81. In its charge to the jury the Court said:

"Gentlemen of the jury: Edward J. McCann stands charged under this indictment with the violation of a statute of this state, passed in 1889, which provides that 'every person licensed under this act shall keep his principal place of business, so as to be seen fully and easily by passers-by, and shall not obstruct such view by screens, blinds, inside shutters, frosted glass, or any other device, of whatsoever kind or character.' Ordinarily we call it the screen act, and the defendant is charged with the violation of that act.

"* * *The sole question here is whether Edward J. McCann, the party charged, under this indictment, has kept his principal place of business so open and free from obstruction as to be seen fully and easily by passers-by. If he has done that, he is not guilty.

"The burden is upon the state to show to your satisfaction, by the evidence, beyond a reasonable doubt, that this man did exactly what he is charged with; that is, by reason of some device or an obstruction of some kind, the view of his saloon or principal place of business, was not fully and easily discernible to the ordinary passer-by.

"This law applies to ordinary passers-by, tall people, as well as short people, and you should be reasonable in the meaning and application of this act. It applies to the ordinary passer-by, the general public.

Honorable William Lee Dodd

"The statute provides that the principal place of business of a licensed liquor dealer shall be kept in such a way as to be fully and easily seen by passers-by and such view shall not be obstructed by screens or any other devices. The court cannot think of any language more simple or more easily understood. The view of the principal place of business is to be unobstructed and so open and clear that it can be fully and easily seen by ordinary passers-by; that is, by the public which passes by, and the public is composed of men and women of all sizes. The statute provides that the principal place of business shall be kept in view of passers-by, and that means that the principal place of business shall be readily seen by or observed by the public, and that anything which tends to hinder or block or obstruct the full and easy view would be a violation of the statute."

This charge indicates that the statutes known as "Screen Acts" are violated when the view of the place of business is obstructed and is not readily seen or observed by the public. So, also, the above definitions of the words of Section 4899 seem to indicate that all that is required is that there be a view of the interior.

The construction of a statute by administrative officials charged with the enforcement thereof is entitled to great weight. (State ex rel. Hanlon vs. City of Maplewood, 99 S.W. (2d) 138, 231 Mo. App. 739.) Courts often resort to this rule when faced with the necessity of construing the language used by the Legislature in a particular Act. In this connection we desire to call your attention to Section E of Regulation No. 12 as promulgated by the Supervisor of Liquor Control.

"(e) Visibility.--Retailers shall not place or permit the placing of any object on or within the windows of premises

Honorable William Lee Dodd

covered by licenses which shall impede or obstruct vision from the exterior into the interior. This prohibition shall include illuminated signs, floral decorations, posters, placards, paintings or writings, and all other similar devices or designs.

"In case Venetian blinds are used in windows, slats must be removed entirely across the blind so as to make visible space beginning at four feet from the sidewalk and extending six feet above the sidewalk, if such venetian blinds are kept closed. If the venetian blinds are kept open it shall not be necessary to remove such slats provided the slats shall at all times be horizontally adjusted so that the flat surfaces thereof are parallel with the floor of the licensed premises. If curtains are used, they must be drawn apart so as to permit a clear view into the interior of the premises.

"Lighting Requirements.--No holder of a retail license shall use illuminated brand signs exclusively for illuminating purposes. Sufficient light must be maintained at all times to insure clear visibility into the interior and within the interior of the premises."

You will note that throughout this section the emphasis has been placed upon the requirement that a clear view into the interior of the premises be permitted. We believe this to be consistent with the intent of the Legislature in the enactment of Section 4899, and that so long as the view of the interior of the room is not completely obstructed or obscured there is no violation of the statute.

You state in your opinion request that the curtains do not obstruct the view but only obstruct about 1/3 to 1/2 of the window. Under these facts we believe there is no violation.

Honorable William Lee Dodd

CONCLUSION

Therefore, it is the opinion of this department that the obstruction of a window by curtains hung so as to obstruct only 1/3 to 1/2 of the window, but which still permit a view of the interior, does not violate Section 4899, R.S. Mo. 1939.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General