

TRANSPORTATION:  
INTOXICATING LIQUOR:

The moving of intoxicating liquor for even a very short distance constitutes "transportation" as that word is used in Section 311.410 RSMo 1949.



February 24, 1956

Honorable James A. Vickrey  
Prosecuting Attorney  
Pemiscot County  
Caruthersville, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Section 311.410 R.S.Mo., 1949, provides as follows. 'No person shall transport intoxicating liquor in, into or through the state of Missouri which has not been lawfully manufactured...' Section 311.460 makes violation of said provision a felony.

"It is my interpretation that the word 'in' means 'within' and concerns intrastate commerce while the words 'into or through' concerns crossing the state line and has to do with interstate commerce. It is also my interpretation that the word 'transport' means physical removal from one point to another by any means. In other words it appears to me that where unlawfully manufactured intoxicating liquor is moved by any means from one point within the state to another point within the state, even if only for a distance of a few feet, this section has been violated and a felony has been committed, otherwise the word 'in' is surplusage. However, in view of the fact that the Legislature has used the word 'within' in Section 311.420, may make my interpretation unsound. The latter section provides that 'No person shall transport into, within or through the state of Missouri any intoxicating liquors in quantities larger than five gallons...'.  
"

"This question is very important in connection with a case now pending and in which a guilty plea is anticipated and also in another case presently

Honorable James A. Vickrey

under investigation.

"Therefore your opinion, at your earliest convenience, is respectfully requested on the following specific question, to-wit:

"1. Where a person in actual possession and control of intoxicating liquor by him known to have been unlawfully manufactured, personally, and by physical acts, moves a quantity of such liquor from one location, such as a still, to another location a short distance away, such as a nearby dwelling house, and where the journey is by foot and wholly within the state of Missouri, has that person acted in violation of the first sentence of Section 311.410 R.S.Mo., 1949, so as to be guilty of a felony?"

We believe that there can be no doubt that the word "in", as used in the first line of Section 311.410 RSMo 1949, has the same meaning as "within", and means the moving of intoxicating liquors from one point within the state of Missouri to another point within the state, as from Caruthersville to Kennett. If this is not the meaning, then the word "into," which follows "in," is duplicitous and without meaning.

Your next question is what constitutes "transportation" as that word is used in Section 311.410, supra. In that regard we direct attention to the following cases.

In the case entitled "Liquor Transportation Cases," 205 SW 423, 428, the Supreme Court of Tennessee held that the carrying of intoxicating liquors from a train to the depot platform constituted "transportation" as that word was used in the liquor laws of Tennessee.

In the case of Caudill v. Commonwealth, 254 SW 745, the Supreme Court of Kentucky held that the carrying of whisky "a short distance" from a house for the purpose of destroying it as evidence constituted "transportation".

In the case of State v. Lando, 300 SW 767, the Missouri Supreme Court held that an information was not defective for failing to allege from and to what places intoxicating liquor was transported in a charge of illegally transporting intoxicating liquor, since it was the act of transporting which constituted the offense.

In the case of State v. Brown, 296 SW 125, the Missouri Supreme Court, at l.c. 126, states:

Honorable James A. Vickrey

"It fails to allege that defendant was transporting intoxicating liquor from any place to any place. Section 19 of the act of 1923 (Laws 1923, p. 242) defines transportation as conveying intoxicating liquor 'from place to place.' Appellant's counsel seems to interpret that expression to mean that there must be some definite shipping point and some definite destination. In the commercial world, when goods are shipped from one person to another, usually there is a consignor, a consignee, and a carrier. The qualifying words in section 19 make it an offense to carry the liquor in any container or receptacle of whatsoever kind or character, and by whatever means used, 'except carrying on the person.' There is no limit as to the purpose of the transportation, nor as to the parties interested in it. It includes transportation for the carrier's own purpose. It does not matter where the transportation begins nor where it ends; it is the act of carrying that constitutes the offense. Neither destination nor distance is important. The information is not open to that objection."

In your letter you do not state the exact distance that this intoxicating liquor was transported or carried. However you can measure this carrying of distance in the light of the above and conclude whether it comes within the meaning of the word "transportation". As a matter of fact, it would appear that almost any moving would come within the definition.

#### CONCLUSION

It is the opinion of this department that the moving of intoxicating liquor for even a very short distance constitutes "transportation," as that word is used in Section 311.410 RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton  
Attorney General

HPW/ld