

NONINTOXICATING  
BEER:  
REVOCATION OF  
LICENSE:



No person shall be granted a permit or license to sell nonintoxicating beer whose permit or license as such dealer has been revoked or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of the violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor or nonintoxicating beer.

January 17, 1957

Honorable Hollis M. Ketchum  
Supervisor  
Department of Liquor Control  
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"May I have your official opinion concerning Sections 312.040 and 312.510 of the Non-Intoxicating Beer Law.

"On August 8, 1956, a 3.2% Non-Intoxicating Beer by Drink licensee was convicted in the Court of Criminal Correction, Division #1, St. Louis, Missouri, and fined \$25.00 and costs for selling 3.2% non-intoxicating beer without a license. Records of this department show that this person's license expired June 30, 1956, and she was arrested July 1, 1956 for sale of non-intoxicating beer without a license. A license was issued July 3, 1956 and she was then convicted August 8, 1956.

"Section 312.510 of the Non-Intoxicating Beer Law reads in part as follows:

" \* \* \* If the person so convicted shall be the holder of any permit or

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license issued pursuant to the provisions of this chapter, such conviction by any court of competent jurisdiction shall, without further proceeding, action or order by any court or by the supervisor of liquor control, operate to revoke and forfeit as of the date of such conviction such permit and all rights and privileges granted thereby, and the holder of such permit shall not thereafter, for a period of one year after the date of such conviction, be entitled to any permit for any person authorized in this chapter. \* \* \* \*'

"Section 312.040 of the Non-Intoxicating Beer Law reads in part as follows:

" \* \* \* \* and no person shall be granted a permit or license hereunder whose permit or license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor or non-intoxicating beer \* \* \* \*'

"May I be advised if this licensee who has been convicted of a violation of the Non-Intoxicating Beer Law will be eligible for a 3.2% Non-Intoxicating Beer license come August 8, 1957 as set out in Section 312.510 or will this licensee be forever barred from obtaining a 3.2% Non-Intoxicating Beer license as set out in Section 312.040."

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Paragraphs 1 and 2 of Section 312.510, RSMo 1949,  
read:

"1. Any violation of any of the provisions of this chapter not otherwise defined, shall be a misdemeanor, and any person guilty of violating any of said provisions, and for which violation no other penalty is by this chapter imposed, shall, upon conviction thereof be adjudged guilty of a misdemeanor and punished by a fine of not less than fifty dollars, nor more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and jail sentence.

"2. If the person so convicted shall be the holder of any permit or license issued pursuant to the provisions of this chapter, such conviction by any court of competent jurisdiction shall, without further proceeding, action or order by any court or by the supervisor of liquor control, operate to revoke and forfeit as of the date of such conviction such permit and all rights and privileges granted thereby, and the holder of such permit shall not thereafter, for a period of one year after the date of such conviction, be entitled to any permit for any person authorized in this chapter."

We here note that the above section was enacted in 1933.

It is a penalty section. The significant part of it, so far as we are here concerned, is the underlined portion in paragraph 2 which, although stated in a somewhat negative manner, holds the promise that if the person involved is otherwise qualified he may, within a year after such conviction as is described, apply for and be entitled to

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any permit for any person authorized by the chapter, 312.

We now turn to Section 312.040, which reads:

"No person shall be granted a permit or license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village nor shall any corporation be granted a permit or 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; and no person shall be granted a permit or license hereunder whose permit or license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor or nonintoxicating beer, or who employs in his business as such dealer, any person whose permit or license has been revoked or who has been convicted of violating such law since the date aforesaid; provided, that nothing in this section contained shall prevent the issuance of permits or licenses to nonresidents of Missouri or foreign corporations for the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of nonintoxicating beer, to, by or through a duly licensed wholesaler, within this state."

We here note that this section was enacted in 1941, therefore being a later section than the former. The

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significant part of this section, we believe, is the underlined portion.

This section, in contradistinction to the former section, is a qualification section. It flatly and plainly states that no person shall be granted a permit or license to sell nonintoxicating beer who has been convicted of a violation of any law regarding the sale of intoxicating liquor or nonintoxicating beer since the ratification of the twenty-first amendment. This we believe brings it in direct conflict with that portion of Section 312.510 set forth above, which section states, by implication, that after such a conviction there shall be an automatic revocation of the license and the holder shall not be entitled to receive a permit for a period of one year thereafter. We do not believe that full force and effect can be given to both sections because they are, we believe, mutually repugnant. We have, therefore, to determine which section shall prevail and in this situation we fall back upon the principle of law that where there is an irreconcilable repugnancy between two sections of law the one enacted later in time prevails and repealed by implication the former.

We are aware of the fact that the law does not favor repeals by implication. In the case of *Preisler v. Toberman*, 269 S.W. 2d 753, the Missouri Supreme Court stated, at l.c. 754:

"The 1953 Act contains no repealing clause or provision whatever. 'Repeals by implication are not favored - in order for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand; where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication; if they are not irreconcilably inconsistent, both must stand.'" *Riley v. Holland*, 362 Mo. 682, 243 S.W. 2d 79, 81;

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State ex rel. and to Use of George B.  
Peck Co. v. Brown, 340 Mo. 1189, 105  
S.W. 2d 909; State ex rel. Boyd v.  
Rutledge, 321 Mo. 1090, 13 S.W. 2d  
1061."

However, it will be noted that this case does admit the principle of repeal by implication where there is a total repugnancy which we believe to be the case in this case.

In the case of Pogue v. Swink, 261 S.W. 2d 40, at l.c. 43 et seq., the court stated:

"Another principle of law also applies; that is: The rule that where a later act covers the entire subject of a prior act or acts, manifesting a legislative intent that the later act prescribes the law with respect to the subject matter, the later act supersedes the earlier act or acts. The rule is well stated in *Murdock v. City of Memphis*, 20 Wall 590, 616, 87 U.S. 590, 616, 617, 22 L.Ed. 429, where two acts of Congress were under consideration. We quote:

" 'It will be perceived by this statement that there is no repeal by positive new enactments inconsistent in terms with the old law. It is the words that are wholly omitted in the new statute which constitute the important feature in the questions thus propounded for discussion. A careful comparison of these two sections \* \* \* can leave no doubt that it was the intention of Congress, by the latter statute, to revise the entire matter to which they both had reference, to make such changes in the law as it stood as they thought best,

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fication of the twenty-first amendment to the Constitution of the United States, of the violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor or nonintoxicating beer.

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

Very truly yours,

John M. Dalton  
Attorney General

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and to substitute their will in that regard entirely for the old law upon the subject. We are of opinion that it was their intention to make a new law so far as the present law differed from the former, and that the new law embracing all that was intended to be preserved of the old, omitting what was not so intended, became complete in itself and repealed all other law on the subject embraced within it. The authorities on this subject are clear and uniform. \* \* \* What is changed or modified is the law as thus changed or modified. That which is omitted ceased to have any effect from the day that the substituted statute was approved.'

"See also Meriwether v. Love, 167 Mo. 514, 517(1), 67 S.W. 250; State ex rel. Gaston v. Shields, 230 Mo. 91, 102, 130 S.W. 298, 300; Hogel v. Lindell, 10 Mo. 483, 488; 59 C.J. 919, § 520; 82 C.J.S., Statutes, § 292, p. 496; 50 Am. Jur. 559, § 556; Crawford, Statutory Construction, 196, § 137; 1 Sutherland, Statutory Construction, 475, § 2018."

We believe, therefore, that no person whose license has been revoked or who has been convicted of a violation of the provisions of Chapter 312 shall be granted a license.

#### CONCLUSION

It is the opinion of this department that no person shall be granted a permit or license to sell nonintoxicating beer whose permit or license as such dealer has been revoked or who has been convicted, since the rati-