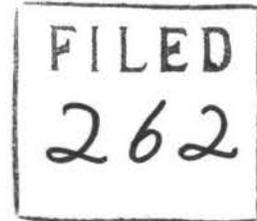


RESORTS: Under the provisions of Senate Bill No. 348,
LIQUOR: Second Regular Session, 77th General Assembly,
LICENSES: which amends Section 311.095, RSMo, the Su-
pervisor of Liquor Control cannot issue a re-
tail by the drink liquor license to the lessee of the restaurant
premises of a motel-restaurant combination and a separate retail
by the drink license to the owner of the motel premises of a motel-
restaurant combination.

OPINION NO. 262

September 30, 1974

Honorable J. T. Howard
Representative, District 157
Route 2
Dexter, Missouri 63841



Dear Representative Howard:

This official opinion is in response to your request for a ruling whether under the provisions of Senate Bill No. 348, Second Regular Session, 77th General Assembly, a retail by the drink liquor license may be issued to the lessee of the restaurant premises of a motel-restaurant combination and a separate license issued to the owner of the motel premises of such motel-restaurant combination.

This question arises because various motel and hotel chains throughout the state frequently lease part of the facilities such as the restaurant to another concern for operation and management and such facilities are not under the direction and control of the management which operates the motel itself. We assume for the purposes of this opinion that all the requirements relating to size and amount of sales are met by the motel-restaurant.

Section 311.090, RSMo 1969, enacted by the legislature in 1939, provides for the licensing of a business engaged in the sale of intoxicating liquor by the drink and designates where such sales are legal. Such sales are not legal in any incorporated city having a population of 20,000 unless authorized by a vote in compliance with Sections 311.110 to 311.130, RSMo 1969. In Opinion No. 151, 1974 (copy enclosed), this office held that the provisions of Section 311.095, RSMo 1969, relating to "resorts" were an exception to and operated independently of the local option requirements.

Honorable J. T. Howard

Senate Bill No. 348, Second Regular Session, 77th General Assembly, redefined the term "resort" by eliminating the requirement that such an establishment be located in a county bordering on a lake having at least 250 miles of shoreline.

Subsection 1 of Section 311.095 was repealed and reenacted by Senate Bill No. 348 to read as follows:

"1. Notwithstanding any other provisions of this chapter to the contrary, any person who possesses the qualifications required by this chapter, and who now or hereafter meets the requirements of and complies with the provisions of this chapter, may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises of any resort as described in the application. As used in this section the term 'resort' means any establishment having at least forty rooms for the overnight accommodation of transient guests, having a restaurant or similar facility on the premises at least sixty percent of the gross income of which is derived from the sale of prepared meals or food, or means a restaurant provided with special space and accommodations where, in consideration of payment, food, without lodging, is habitually furnished to travelers and customers, and which restaurant establishment's annual gross food sales for the past two years immediately preceding its application for a license shall not have been less than one hundred thousand dollars per year, or means a new restaurant establishment having been in operation for at least ninety days preceding the application for such license, with a projected experience based upon its sale of food during the preceding ninety days which would exceed not less than one hundred thousand dollars per year."
(Emphasis supplied)

The answer to your question depends upon the construction and interpretation that is to be accorded the underlined portions of Section 311.095(1).

Honorable J. T. Howard

There are certain well-established maxims of statutory construction. The primary rule is to ascertain and to give effect to the legislative intent. Edwards v. St. Louis County, 429 S.W. 2d 718 (Mo.Banc 1968). Effect should be given to every word, phrase, and sentence. State ex inf. Taylor ex rel. Oster v. Hill, 262 S.W.2d 581 (Mo.Banc 1954). Another fundamental rule in the construction of statutes is embodied in the maxim "expressio unius ex exclusion ulterius" which means that the expressed mention of one thing, etc., implies the exclusion of another. City of Hannibal v. Minor, 224 S.W.2d 598 (St.L.Ct.App. 1949).

Applying the above rules, we believe that the answer to your question must be in the negative. A retail by the drink liquor license authorizes the consumption of intoxicating liquor on the licensed premises. Senate Bill No. 348 authorizes a retail by the drink license to a "resort" (singular). The premises which constitute this singular "resort" is an establishment having at least forty rooms for overnight accommodation and a restaurant or similar facility. We do not believe that it was intended that such resort premises could be divided and separate licenses issued to a portion thereof. A motel or a hotel by itself without any restaurant would not meet the definition of a "resort" and the owner or operator of such a facility would clearly not be entitled to a retail by the drink liquor license. Had the legislature intended that separate licenses could be issued, one to the restaurant portion of the premises and one to the motel portion of the premises, it could have so stated. But it did not.

We have been advised by the Supervisor of Liquor Control that the above is consistent with his interpretation of these provisions and that he is not issuing separate licenses. Although the interpretation and construction of a statute by the agency charged with its administration and enforcement is not binding or conclusive, it is entitled to great weight. Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193 (Mo.Banc 1972).

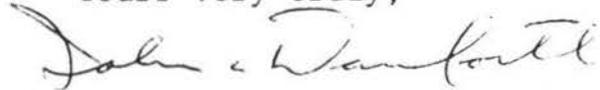
CONCLUSION

It is the opinion of this office that under the provisions of Senate Bill No. 348, Second Regular Session, 77th General Assembly, which amends Section 311.095, RSMo, the Supervisor of Liquor Control cannot issue a retail by the drink liquor license to the lessee of the restaurant premises of a motel-restaurant combination and a separate retail by the drink license to the owner of the motel premises of a motel-restaurant combination.

Honorable J. T. Howard

The foregoing opinion, which I hereby approve, was prepared by my assistant, Daniel P. Card II.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 151
4-10-74, Garrett