

CRIMINAL LAW:

✓ Beer law: Act does not make it a criminal offense for one holding distributor's license to be interested in retail business.

See ~~13139H~~ Law-32

June 9, 1933.

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Mr. David R. Clevenger,
Prosecuting Attorney,
Platte City, Missouri.

Dear Sir:

We are acknowledging receipt of your inquiry of June 3, 1933, as follows:

"I am very desirous of having some information relative to the following:

An investigation is being made wherein a certain man in this County, holding a wholesale beer permit, is likely interested in a restaurant selling beer under a retail permit.

I would appreciate your sending me a form of indictment or information covering this matter.

I will appreciate an early reply due to the fact that I am being pushed on this matter at this time.

Thanking you in advance for this along with past favors."

The sections referring to the issuance of the permit are as follows:

"Section 13139h. Before any permit authorized by this article shall be issued and delivered to any applicant therefor, such applicant shall take and subscribe to an oath and he will not allow any intoxicating liquor of any kind or character, including beer having an alcoholic content in excess of 3.2 per cent by weight, to be kept, stored or secreted in or upon the premises described in such permit, and that such applicant will not otherwise violate any law of this state, or knowingly allow any other person to violate any law of this state while in or upon such premises. Provided no permit shall be issued under this act to any person other than a native born, or naturalized, citizen of the United States of America, and provided further, no manufacturer or distributor, to whom, or to which, this act applies, shall have any interest, directly or indirectly, in the business of any person, firm, company, or corporation, applying for,

securing, or holding, a permit under sub-paragraph "c" or sub-paragraph "d" of Section 13139e of this Act."

Sub-paragraph "c" of Section 13139e is as follows:

"For a permit authorizing the sale of non-intoxicating beer for consumption on premises where sold, (\$10.00) ten dollars."

Sub-paragraph "d" of Section 13139e is as follows:

"For a permit authorizing the sale of non-intoxicating beer by grocers and other merchants and dealers, for sale in the original package direct to consumers, but not for resale, (\$5.00), five dollars."

The three above citations are the Sections under the beer act which cover the issuance of permits, both as distributor and as retailer. There is nothing in Section 13139h which would indicate, either expressly or by implication, that a violation of that Section is either a misdemeanor or a felony. The section simply provides that no person holding a permit as a distributor or manufacturer shall have any interest, directly or indirectly, in the business of any company doing business as provided in sub-section "c" and sub-section "d".

There is no general section in the beer law which provides that any violation of the act shall be a misdemeanor. There are various sections which make certain violations misdemeanors, and the violation of Section 13139t is made a felony. The only general section contained in the act is section 13139y, which is as follows:

"Any person convicted of the violation of any provision of this article, the violation of which is by this article defined as a misdemeanor, and for which no specific punishment is in this article provided, shall upon conviction thereof be punished as otherwise provided by law, and if any person so convicted shall be the holder of any permit issued by the Food and Drug Commissioner under authority of this article, such permit shall from and after date of such conviction, be void, and the holder thereof, shall not thereafter, for a period of one year after date of such conviction, be entitled to any permit for any purpose authorized in this article."

That section merely provides that "any person convicted of the violation of any provision of the article, the violation of which is by this article defined as a misdemeanor and for which no specific punishment is in this article provided, shall upon conviction thereof be punished as otherwise provided by law."

June 9, 1933.

Section 13139h contains no provision making the violation of that section a misdemeanor, and the violation of that section would not come under the provisions of Section 13139y.

Section 4474 R. S. No. 1929, provides as follows:

"The terms "crime," "offense," and "criminal offense," when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted."

Under the definitions in the above section, a person violating section 13139h has not committed a "crime," "offense," or "criminal offense," because nowhere in the act is the violation of section 13139h made punishable by fine or imprisonment. Nor are there any words indicating that the violation of said section would be a crime.

It is, therefore, the opinion of this Department that if a distributor in violation of section 13139h should have an interest in a retail establishment selling beer, that he is not guilty of a crime for the reason that the Legislature has not made such a violation a crime. However, the person violating said section could have his license forfeited because it is clearly the intention, as expressed in the Act, that the distributor shall not also be a retailer. If the person seeking a license as a distributor had an interest in a retail business at the time of his application, the license as a distributor would not be issued to him. If he acquires such interest after he has a distributor's license, his right to continue to hold a distributor's license will be forfeited.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

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