

BEER LAW:

State Fair Grounds,
not unlawful for directors
to sell concessions for sale
of beer therein. ✓

12480 RS Mo 1929
1213977 + 28 Laws 33
June 14, 1933.

6-23



Mr. Charles W. Green,
Secretary Missouri State Fair,
Sedalia, Missouri.

Dear Sir:

We are acknowledging receipt of your letter of June 6,
1933, in which you inquire as follows:

"Will you please give me a ruling on how I can handle
beer concessions on the State Fair Grounds this year.
I am getting a lot of inquiries relative to the sale
of beer and would like to know how I can handle it.

Especially, I would like to know if I may sell the
privilege to anyone to peddle beer in the grandstand.

Thanking you very much for an early reply, I am."

Section 12480 R. S. Mo. 1929, provides that the board
of directors shall have power to make all rules, regulations and
by-laws necessary for the conduct and government of the exhibitions
and sale of privileges etc., in connection with the State Fair.
In addition thereto the Act specifically provides as follows:

*** Provided it shall not, directly or indirectly,
permit any gambling devices of whatever nature to be
operated on the grounds, nor permit any intoxicating
liquor, wine or beer to be sold thereon ***."

The above prohibition against the sale of intoxicating
liquors at the Fair Grounds has been on our Statute books long
prior to the 1909 Revised Statutes. The word "intoxicating"
modifies and qualifies the words "liquor," "wine" and "beer."
the prohibition of this Section of the Statute is against the
State Fair permitting the selling of "intoxicating" beer. This
prohibition does not mean that malt drinks are prohibited. Beer
is a malt drink but, as used in the Statute, the Legislature was
not seeking to prohibit the sale of malt drinks, but was seeking
to prohibit the sale of intoxicating beer.

Such deduction must result from an analysis of the
situation existing at the time of the enactment and continuation
of Section 12480. During that period of time there was no such
thing as non-intoxicating beer. Under the Dram Shop License Laws

and Local Option Laws in effect during this period of time, the word "beer", both by popular conception and legal definition, was construed to mean "intoxicating beer," and not malt drinks. It is said in State v. Mitchell, 134 M. A. 540, 543:

"In People v. Wheelock, 3 Park 9, the Supreme Court of New York held, that the word 'beer' in its ordinary sense, denotes a beverage which is intoxicating.

The Kansas City Court of Appeals, in the case of State v. Heinze, 45 M. A. 403, held that section 4395, Revised Statutes 1889, in effect defined beer to be intoxicating liquor. To the same effect is State v. Houts, 36 Mo. App. 265.

In the light of these authorities and in obedience to the legislative will, as interpreted by the Kansas City Court of Appeals in State v. Heinze, supra, we construe the word 'beer' as used in the indictment, and instructions given in this case, to mean a fermented and intoxicating liquor."

It is, therefore, apparent from the foregoing that when the Legislature used the word "beer" in Section 12480, that it meant "intoxicating" beer. It expressly so stated in said Section and the courts in construing the Statute in existence prior to the adoption of the Eighteenth Amendment did so hold. It is, therefore, our opinion that Section 12480 only prohibits the board of directors from permitting the sale of intoxicating beer and does not prohibit them from permitting the sale of non-intoxicating beer. The board of directors may, therefore, permit the sale of beer in such manner and under such conditions as is imposed by the Legislature in the recently enacted Beer Law, the terms of which we shall now discuss.

The Beer Act recently passed is the exclusive legislation upon the subject of manufacture and sale of beer. We shall only call your attention to the various sections which are pertinent to the answer of your inquiry. Section 13139a, declares that beer not exceeding 3.2 per cent by weight is non-intoxicating and may be lawfully manufactured and sold under regulations set out in the Act.

Sub-paragraph "c" of Section 13139e provides as follows:
"For a permit authorizing the sale of non-intoxicating beer for consumption on premises where sold, \$10.00."

Section 13139u provides that under a permit authorizing the sale of non-intoxicating beer for consumption of the premises described in such permit, the holder of the permit may sell beer by bottle, by glass, on draught and in the original package.

The only two Sections in the Act providing restrictions as to how the holder of the permit shall sell beer are Sections 13139z7 and 13139z8. Section 13139z7 prohibits the sale of non-intoxicating beer to any person while standing at or near any bar or counter in or upon such premises, but permits the sale at tables or counters while such customers are seated at such tables and counters.

Section 13139z8 prohibits the holder of a permit authorizing the sale for consumption upon the premises to maintain in any room on said premises any bar, mirror or other fixtures having the appearance of a saloon, such as existed prior to the effective date of the Eighteenth Amendment, and prohibits the maintaining of any blinds or screens such as will obscure such room from public view.

The two above Sections, therefore, prohibit the sale of beer at bars and counters to people while standing, but do not prohibit the sale at counters and tables to customers while seated, and provide that the premises shall not be so equipped with mirrors, blinds and fixtures as to give the appearance of a saloon. There are no other restrictions in the Act regulating the sale of beer for consumption on the premises by the person holding such a permit. It must, therefore, be held that the Legislature did not intend to prohibit the sale in any other manner or under any other circumstances than as provided above. A person holding a permit for consumption on the premises who sells in a manner and under circumstances not in conflict with the two above Sections, will be making a legal sale under the terms of the Act. There is nothing in the terms of the Act, either expressly or by implication, which would prohibit the holder of such a permit from having his employes solicit sales and deliver a bottle of beer from a container which he carries. The law does not require, in order for the sale to be legal, that the beer be drunk while consuming food, or that the holder of the permit sell food on the premises.

In *State v. Fezzette*, 69 Atl. 1073, the word "premises" was held to mean a room, or a shop, or a building, or a definite area, but in either case the locality is fixed.

In *re Cullinan*, 99 N. Y. S. 375, it is said:

"The 'premises' and lands are synonymous and if there is any distinction between the words, it is that the word 'premises' is more inclusive."

The word "premises", therefore, may mean a room, a building, or a definite area which is not inclosed like a room or building. As for example, beer gardens. The area known as the "grandstand" located upon the State Fair Grounds is a

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definite area, the limits of which are well defined and fixed. If a person should obtain a permit to sell beer for consumption upon the premises known as the grandstand, we do not believe that the law would prohibit such holder of the permit from having his employes pass among the occupants of the grandstand for the purpose of soliciting sales and delivering beer to be drunk.

Section 13139z1 prohibits the holder of a permit from permitting any person to mix any ingredient with beer for the purpose of increasing its alcoholic content. Section 13139z3 makes it a misdemeanor for any person to add any ingredient which will increase the alcoholic content.

It is, therefore, the opinion of this Department that the board of directors may sell concession permits and may lease certain defined areas within the State Fair Grounds to persons who intend to sell beer for consumption upon the premises. The holder of such a concession must pay a license to the Federal Government and the State of Missouri for the privilege to sell beer for consumption on the premises. The premises upon which beer is to be sold should be well defined in the permit and should be as extensive as the premises leased. Holders of permits cannot sell beer at bars or counters to people while standing, but may sell beer to customers while seated at counters or tables. Such premises shall not contain bars, mirrors, screens, or other fixtures which would give the appearance of a saloon as it existed prior to the adoption of the Eighteenth Amendment.

If a person should obtain the necessary permit for the sale of beer for consumption on the premises known as the "grandstand" in the Fair Grounds, we do not believe it would be a violation of law for the holder of such permit to peddle beer among the people occupying the grandstand, if he has complied with the above restrictions and limitations required by law.

Very truly yours,

Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S