

LIQUOR: WHOLESALE DRUGGISTS:

In Re. Right of Wholesale Druggists to import Whiskey for medicinal purposes and ship it to their retail drug customers for medicinal purposes.

12-14  
December 13, 1933.

FILED  
87

Mr. Edward P. Schrader  
Meyer Brothers Drug Company  
Fourth Street and Clark Avenue  
Saint Louis, Missouri.

Dear Sir:

Your letter to this Department on December 12th received requesting opinion on the right of wholesale druggists to import into this State whiskey for medicinal use only and sell and ship same to your retail drug customers for medicinal purposes only.

The pertinent parts of your letter read as follows:

"As we understand Section 4508 of Chapter 31, our status since repeal is just as it was prior to repeal of the 18th Amendment, in that we are permitted under the existing Missouri Laws to sell and ship either within or out of the state when such sales are to retail druggists and intended for medicinal purposes.

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"It is our belief that under Section 4508 we are permitted to import whiskey for medicinal purposes and ship it to our retail drug customers for the same purpose."

PROVISIONS OF SECTIONS ONE AND  
TWO OF TWENTY-FIRST AMENDMENT  
REPEALING THE EIGHTEENTH AMEND-  
MENT AND PROHIBITING IMPORTA-  
TION INTO STATES OF INTOXICATING  
LIQUORS IN VIOLATION OF STATE  
LAWS.

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The Twenty-First Amendment to the United States Con-  
stitution ( Sections 1. and 2. thereof) repealing the Eighteenth  
Amendment reads as follows:

"Section 1. The Eighteenth Article of  
Amendment to the Constitution of the Uni-  
ted States is hereby repealed.

"Section 2. The transportation or importa-  
tion into any state, territory, or posses-  
sion of the United States for delivery or  
use therein of intoxicating liquors in  
violation of the laws thereof is hereby  
prohibited."

It is plain to be seen that intoxicating liquor is  
forbidden, by the Twenty-First Amendment, to be imported  
into any state or territory in violation of the laws there-  
of.

The first question therefore presented is - whether  
or not Missouri Statutes prohibit importation by wholesale  
druggists of intoxicating liquors for medicinal use only.  
The second question is - if intoxicating liquors can be im-  
ported by wholesale druggists for medicinal use, can the  
wholesale druggist sell and ship same to retail drug  
customers for medicinal use only.

PROVISIONS OF MISSOURI STATUTES  
AND DECISIONS THEREON RELATIVE  
TO SALE AND IMPORTATION OF IN-  
TOXICATING LIQUORS FOR MEDICINAL  
PURPOSES ONLY BY WHOLESALE DRUG-  
GISTS.

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The Statute Law of Missouri as to intoxicating liquors relating to druggists deals with whiskey as a medicine.

The Prohibition Laws of Missouri are directed to prohibiting the use of whiskey as a beverage.

Chapter 31. Revised Statutes of Missouri, 1929, contains the laws of the State forbidding sale, possession, manufacture, transportation, importing and exporting intoxicating liquors except for certain non-beverage purposes named in Section 4482 of said chapter.

Chapter 94, Revised Statutes of Missouri, 1929, authorizes sale by druggists and pharmacists of intoxicating liquors in manner and quantity as provided in Section 13157 of said Chapter 94.

In State v. Ryan, 217 M. A., l.c. 545, our court said:

"The prohibition statute is separate and distinct from the druggist statute and does not repeal the provisions of the druggist act unless it be so clearly in conflict therewith that both cannot stand. It is familiar law in this State that prior to the adoption of the Federal Prohibition Amendment and subsequent State legislation of a prohibitive character, the adoption of the Local Option Law which put prohibition in force in the territory adopting it did not repeal or supersede the druggist's statute. \* \* \*"

Section 4482, found in Chapter 31. Revised Statutes of Missouri, 1929, which chapter contains the State-wide Prohibition Law of Missouri provides as follows:

"That the provisions of this chapter shall not be construed so as to prevent the manufacture, importation, exportation or sale of

\* \* \* \* \* ethyl alcohol for scientific, pharmaceutical, mechanical, or industrial purposes, or to prevent the sale of ethyl alcohol or wine by pharmacists or Druggists as provided herein for medicinal or sacramental purposes."

Section 4507. of said Statute, dealing with State-wide Prohibition, defines "ethyl alcohol" as follows:

"The term 'ethyl alcohol' as used in this chapter, or in any other law of this state pertaining to intoxicating liquors, shall be held and construed to mean any ardent spirits containing grain alcohol, or alcohol made from molasses, sugar, or by any other process whatsoever, except methyl alcohol, commonly known as wood alcohol, and except also ethyl alcohol denatured by any formula prescribed, or approved, by the treasury decisions, or regulations of the United States government."

Section 4496, Revised Statutes of Missouri of 1929, being a section of the State-wide Prohibition Law, defines the phrase "Intoxicating Liquor" or "Intoxicating Liquors" as follows:

"The phrases 'intoxicating liquor,' or 'intoxicating liquors,' whenever used in this article, shall be construed to mean and include any distilled, malt, spiritous, vinous, fermented or alcoholic liquor, all alcoholic liquids whether proprietary, patented or not, which contain one-half of one per centum of alcohol by volume and which are potable or capable of being used as a beverage: \* \* \* \*"

Prior to August 8, 1890, the Federal Supreme Court decided, a law of a State forbidding importation of intoxicating liquor in the original package was an inter-

ference with interstate commerce and was unconstitutional.

Bowman v. Chicago & N.W. RR. Co.,  
125 U. S. 465.

On August 8, 1890, the "Wilson Law" was enacted by Congress. It provided:

"All fermented, distilled or other intoxicating liquors, transported into any state, or territory or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

This Act was held constitutional.

In Re: Hahrer, 140 U. S. Reports 545.

Later, the Webb-Kenyon Act (March 1, 1913) was enacted to prevent the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in States contrary to their laws and thus, in effect, to afford a means by subterfuge and indirection to set such laws at naught.

This Act was upheld by the Supreme Court.

McCormick v. Brown, 286 U. S. 1.c.  
141.

On March 3, 1917, the Reed Act was passed prohibiting the introduction of intoxicating liquor into States in violation of their laws.

The United States Supreme Court, later on May 16, 1932, held the Webb-Kenyon Act was not repealed either by the Eighteenth Amendment or the National Prohibition Act.

It is the opinion of this Department that all three of the above acts of Congress are yet in force.

These Acts have now been supplemented by the above quoted Section 2. of the Twenty-First Amendment prohibiting the importation into any State of intoxicating liquor in violation of the laws of the State.

MISSOURI STATE-WIDE PROHIBITION  
ACT NOT REPEALED BY ADOPTION OF  
EIGHTEENTH AMENDMENT NOR BY THE  
REPEAL OF SAID EIGHTEENTH AMEND-  
MENT.

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The Federal Supreme Court recently said:

"State Prohibition Laws derive their force from the power originally belonging to the States and preserved to them by the Tenth Amendment, and are not superseded by the Eighteenth Amendment where they do not sanction what it forbids."

Of course, it follows, if the Eighteenth Amendment did not repeal State Prohibition Laws, the repeal of the Eighteenth Amendment does not repeal the State Prohibition Laws.

THE STATUTES OF MISSOURI AND  
THE DECISIONS OF OUR COURT  
PERMITS IMPORTATION AND EX-  
PORTATION OF INTOXICATING  
LIQUORS BY WHOLESALE DRUG -  
GISTS FOR MEDICINAL USE ONLY  
TO RETAIL DRUGGISTS.

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The Second Section of the State-wide Prohibition Law ( Sec. 4482, R. S. Mo. 1929,) expressly excepts from the provisions of the State-wide Prohibition Act "ethyl alcohol" or wine used for medicinal purposes and allows both importation and exportation thereof. Section 4507, Revised Statutes of Missouri, 1929, being a section of the State-wide Prohibition Act defines "ethyl alcohol" as the term is used in the Act or in any other Act of the State pertaining to intoxicating liquor as "any ardent spirits containing grain alcohol or alcohol made from molasses or sugar or by any other process whatsoever."

Section 4496, Revised Statutes of Missouri of 1929, being another section of the State-wide Prohibition Act defines "intoxicating liquor" as "any distilled, malt, spiritous, vinous, fermented or alcoholic liquor."

These statutory definitions cover "whiskey" and Section 4482, Revised Statutes of Missouri, 1929, ( being part of the State-wide Prohibition Law) expressly authorizes the importation and exportation of liquor for medicinal purposes as above defined, because the said section declares nothing in the State Prohibition Act shall be held to prevent the importation, exportation of said defined liquors into the State or the sale thereof, and if the State law does not prohibit the sale nor importation or exportation of said liquors for medicinal use, the Twenty-First Amendment to the Federal Constitution does not do so because it specifically prohibits importation and transportation only when same is in violation of the laws of the State.

Section 4508 - (same being a section of the State Prohibition Act) provides as follows:

"This chapter shall not be construed as to prevent the manufacture, or sale, by a distiller, or wholesale druggist of any intoxicating liquors, alcohol and wine for non-beverage purposes under authority of, or in compliance with the laws of the United States or this state."

The last above quoted section of the Statutes expressly provides the State-wide prohibition act shall not be construed to prevent the manufacture or sale of intoxicating liquors in compliance with or under the authority of the laws of this State.

The provisions of the Druggist's Statute of Missouri of 1929, heretofore referred to herein authorizes the sale, by wholesale druggists, for medicinal use of intoxicating liquors; and the opinion of our Court, hereinbefore quoted holds the Druggist and Pharmacy Laws of Missouri are not repealed by the State-wide Prohibition Act.

What is said herein as to importation, exportation and sale of intoxicating liquor for medicinal use only must be understood to mean the wholesale druggist must have a permit under Section 4483, Revised Statutes of Missouri, 1929, to handle intoxicating liquors for medicinal purposes and any wholesale druggist complying with Section 4483 is entitled to a permit.

RAILROAD OR OTHER CARRIER SHOULD  
TRANSPORT ONLY TO ONE HAVING A  
PERMIT UNDER SECTION 4483 SO LONG  
AS STATE PROHIBITION ACT IS IN  
FORCE IN THIS STATE.

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Section 4481, Revised Statutes of Missouri, of 1929, prohibits the transportation of intoxicating liquor in Missouri and this Section, construed in connection with all of the statutory provisions relating to State prohibition, in the opinion of this Department, renders it advisable



for railroad or other carriers to transport intoxicating liquors in Missouri only when consigned to a corporation or person or firm holding a permit under section 4483 Revised Statutes of Missouri of 1929.

It is the opinion of this Department that, if your firm has a permit under Section 4483, Revised Statutes of Missouri of 1929, you can import and export whiskey for medicinal use only into this State; and you can sell to your retail drug customers whiskey for medicinal use only, to be sold by retail customers only in accordance with provisions of Missouri Statutes.

Very respectfully,

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EDWARD C. CROW  
Assistant Attorney-General.

APPROVED:

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ROY MCKITTRICK  
Attorney-General.

EGG/AJ