

wholesale
LIQUOR CONTROL ACT: Licensed/distributor may employ agent and agent need not obtain a license.

Sec 13139c for 11234 250

June 13, 1934.

6-25



Hon. E.W. Allison,
Prosecuting Attorney,
Rolla, Missouri.

Dear Sir:

This department is in receipt of your letter of May 25, 1934 in which you request an opinion as to the following state of facts:

"A wholesale distributor of 3.2 beer, holding from the State a wholesale dealer's license and having a group of counties as a district, hires a second man in one of his counties to take orders and deliver the beer thereafter. This hired man furnishes his own truck and is paid on a straight salary basis-- no bonus or commissions. The beer is at all times the property of the wholesale distributor or dealer; the hired man merely taking orders from retail customers and delivering the beer for the distributor who hires him. The wholesale dealer supplies and the hired man keeps on hand about one week's supply in advance ready for delivery to retail customers.

Now the question: Is this hired man required, under the 3.2 per cent beer law to obtain a distributor's license from the Food & Drug Commissioner?"

Laws of Missouri 1933, page 256, provide for the manufacture, sale and inspection of non-intoxicating beer. Sec. 13139c provides in part as follows:

"Before any permit required by this article shall be issued, the annual fee required therefor shall be paid into the State Treasury, and the receipt for such payment filed in the office of the Food and Drug

Commissioner. Annual fees required for permits authorized by this article shall be as follows:

* * * * *

(b) For a permit authorizing the sale in this state by any distributor or wholesaler, other than the manufacturer or brewer thereof, of non-intoxicating beer (\$50.00) fifty dollars."

Where a person conducts the same business at several different places, as a general rule, he must procure the required license or pay the required tax for each establishment. 37 Corpus Juris 210.

In the case of State v. Hughes, 24 Mo. 147, the Court said (l.c. 150):

"The indictment is for selling liquor in St. Louis County without license. The license offered permitted the sale at a particular place in the county, namely, in block No. 15, of the City of St. Louis. Now my own impression is, for this license to protect, he must show that he sold under it--that is, at the place permitted--otherwise, the license fails to give authority to sell, for nowhere else except at block No. 15 aforesaid is he authorized to sell. There is no error then committed by the court in rejecting this license first offered."

However, this restriction as to place of sale must not be confused with the proposition of persons protected by the permit or license. Absent any statutory requirement in the Missouri Act, it is fundamental that a licensed vendor of intoxicating liquors may employ an agent to carry on his business, and the agent will be under the protection of the licensee.

In the early case of Haug v. Gillett, 14 Kan. 140, the Court held:

" A liquor dealer must have a license from the city or county in which his store is kept. With such license he may send out agents and take orders in any part of the state for goods to be selected and forwarded from the stock kept in such store, and is not required to obtain a license from the authorities of each city or county in which contracts are made therefor by such agents."

In the opinion, Judge Brewer said:

*****The proposition involved in this case is substantially that a wholesale liquor-dealer having a stock of goods and conducting business in a city from whose authorities he has received a license cannot send out agents and take orders for those goods elsewhere than in such city without first obtaining a license from the authorities of each city or county in which those orders are taken. The proposition is a broad one, and the language of the statute should be clear before such an intention is imputed to the legislature. The legislature may suppress the liquor traffic altogether, or it may impose such restrictions as it deems wise.

* * * * *

The business of a wholesale dealer is carried on extensively, generally by agents--traveling-men, as they are called--who visit the different towns, and solicit orders. To recognize and license such a business, and at the same time to cut off one of the ordinary methods of carrying it on, while it is within the power of the legislature, should also be within the clear meaning of the enactments.

* * * * *

But where was the sale completed? The contract therefor was made in Topeka, but did any title pass before the goods were selected and separated from the whole stock? Clearly not--and therefore the sale was not completed till then. The goods were selected and separated at Leavenworth, and there delivered to the carrier, to be by him forwarded to the purchaser. At Leavenworth, then, the sale was completed, and there Gillett had a license. *Baucher v. Warren*, 33 N.H. 183; *Boothby v. Plaisted*, 51 N.H. 436."

CONCLUSION

In view of the foregoing, it is the opinion of this department that a licensed distributor of intoxicating liquor may employ an agent to carry on his business, and the agent need not obtain a license so to do from the Food and Drug Commissioner; however, if a licensed distributor maintain warehouses other than that wherein he is licensed to do business as a distributor, then it is necessary that he obtain separate licenses from the Food and Drug Commissioner.

Respectfully submitted,

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APPROVED:

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