

LIQUOR CONTROL ACT : Corporations may be licensed, and Section 27
not applicable to them.

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Hon. E. J. Becker
Supervisor of Liquor Control
State Capitol
Jefferson City, Missouri

Dear Mr. Becker:

This is to acknowledge receipt of your request for an opinion as to whether or not a corporation may legally be issued a license under the Liquor Control Act of Missouri, passed by the 57th General Assembly, in Extra Session.

I.

When analyzing the various provisions of the Liquor Control Act it is well to keep in mind the language of the Supreme Court of Missouri, en Banc, in the case of State v. Parker Distilling Company, 236 Mo. 219, l. c. 274:

"When we bear in mind the foregoing idea, that the liquor traffic in this state has no legal rights, save and except those expressly granted by license and the statute under which it is issued, then we can more clearly see that the state may impose such conditions, burdens and regulations as it may deem wise and proper, and no one who engages therein has a right to complain thereof."

Likewise, it must be born in mind that the Liquor Bill that was truly agreed to and finally passed consisted of a Committee Substitute for Senate Bills Nos. 6, 21, 22, 23, 24 and 25, thus intimating that many bills were introduced which contained various conflicting provisions later incorporated into the act as passed.

The enacting clause provides this:

"providing for the issuance of licenses for the manufacture, brewing and sale, both at wholesale and retail of intoxicating liquor;"

Note the language of the Supreme Court of Missouri, en banc, in *State v. Public Service Commission*, 34 S. W. (2d) 486, l. c. 488, when it was construing inharmonious provisions of the statute then before it for determination:

"From the historical sketch presented by the appellants, there were heated debates as to whether the act should be made to include urban busses such as the appellants operate. It is entirely possible that the members of the General Assembly who voted for the bill did not all understand its provisions alike. That some parts of it represented the views of some of the lawmakers and other parts met the demands of other members of the General Assembly. We are therefore obliged to interpret the law as it reads and reconcile its inharmonious provisions if possible. We may keep in mind the rule quoted from Cyc. by appellants, to the effect that, in interpreting relative or qualifying terms, they must be construed as relating to the last antecedent instead of extending them to include others more remote 'unless such extension is clearly required by consideration of the entire act.' 26 Cyc. p. 1125."

Also, the language of the Supreme Court of Missouri in *Bowers v. Kansas City Public Service Company*, 41 S. W. (2d) 810, l. c. 815:

"If these provisions stood alone, there might be merit in plaintiff's contention. The entire statute must be considered in determining the purpose of the legislature in enacting it."

Also, in *De Jarnett v. Tickameyer*, 40 S. W. (2d) 686, l. c. 687 (Mo. Sup.):

"All provisions of the statute should be considered in determining the meaning of any particular portion thereof, and effect given to every part of the statute where it is possible to do so."

And in *Logan v. Matthews*, 52 S. W. (2d) 989, 1. c. 992, the Supreme Court of Missouri, en Banc, said:

"The two sections of the statute should be read and construed together. In construing a statute, the court must, if possible, give effect of the whole and every part thereof, provided the interpretation reached is reasonable and not in conflict with the legislative intent."

And in *Dodd v. Independence Stove and Furnace Co.*, 51 S. W. (2d) 114, 1. c. 118 (Mo. Sup.) the court said:

"Appellant's construction would render one of said descriptive adjectives practically superfluous, and the legislature will not be presumed to have intended using superfluous or meaningless words in the statute.

Moreover, in construing a statute the evil sought to be remedied and the benefit intended to be conferred thereby should be considered * * * such statutes should be construed, so far as their language permits, with a view of effectuating their beneficent purpose."

Therefore, in interpreting the provisions of the Liquor Control Act, we do so, keeping in mind the intent of the Legislature, reading the act as a whole, and harmonizing conflicting sections therein, if possible, so as to give effect to each of the provisions of the act.

II.

An examination of the statutes of Missouri will show that the words "person or persons" include corporations, co-partnerships, and other entities; and, likewise, in the Liquor Control Act the Legislature specifically defined the word "person" to include partnership, syndicate, association, corporation etc. We quote Section 43-a:

"The term 'person' as used in this Act shall mean and include any individual, association, joint stock company, syndicate, co-partnership, corporation, receiver, trustee, conservator, or other officer appointed by any State or Federal Court."

Thus when the word "person" appears in the provisions of the Act, said word is susceptible of meaning "person", as defined, and it does not require judicial definition or construction to include associations, joint stock companies, syndicates, partnerships, corporations etc.

The word "person" appears throughout the Liquor Control Act, namely, Sections 5, 8, 9, 13-a, 15, 15-a, 18, 19, 21, 21-a-1, 22, 22a, 27 and 44-a. In some instances the term "any person", "every person", "no person" and "every person" are used, and in other instances this phrase is used, "Any person, firm, partnership or corporation"; thus showing that when the Legislature used the word "person", in said Act, that it did not intend to limit same in every instance to the generally accepted definition thereof, namely, that of an individual.

To illustrate our contention, we quote a few of the sections:

Section 8, in part provides:

"No person shall possess intoxicating liquor within the State of Missouri unless the same has been acquired from some person holding a duly authorized license etc."

Section 18 provides:

"It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as herein defined, in any quantity, without taking out a license."

Section 19, in part provides:

"* * * Before any application for license shall be approved the Supervisor of Liquor Control shall require of the applicant a bond, to be given to the state, in the sum of Two Thousand Dollars, * * * to be approved by the Supervisor * * *, conditioned that the person obtaining such license shall keep etc."

Section 21, in part provides:

"No person, partnership, association of persons or corporation shall manufacture or distill * * * shall sell or give away, or offer for

sale, at wholesale or retail, * * * blend intoxicating liquor, * * * shall import intoxicating liquor etc. "

The Supreme Courts of other jurisdictions, in disposing of the question involving the right of a corporation to deal in intoxicating liquor, held that the word "person" included corporation. We herewith cite and quote therefrom:

In Audubon Country Club v. Commonwealth, 183 S. W. 911 (Ky.), the following was said:

"License to keep a tavern outside of an incorporated city or town shall be granted only to persons who are prepared with houses, bedding, stoves and provender sufficient to accommodate the public and shall not be granted to anyone unless the keeping of a tavern at the place proposed is necessary for the accommodation of the public nor until the applicant shall take an oath in open court that he in good faith intends to keep a tavern for the accommodation of the public."

It will be observed that the above section authorizes the granting of a tavern license to persons who are prepared etc.

Section 457, Kentucky Statute, defines the word 'person' as follows: 'the word "person" may extend and be extended and be applied to bodies politic and corporate, societies, communities and the public generally, as well as individuals, partnerships, persons and joint stock companies. The words "corporation" "company" may be construed as including any corporation, company, person, persons, partnership, joint stock companies or associations.'

It would seem reasonably clear from the statute quoted that it was not the legislative purpose to give to the word 'person' in the statute authorizing the issuing of tavern licenses any more restricted meaning than in other familiar statutes, there being nothing to indicate that such exceptions should be made in the case of persons applying for tavern licenses.

"We therefore conclude that a corporation may be granted a tavern license and that the statutory oath may be taken on its behalf by its authorized officers. This view is fortified by the following authorities from other states on this question:

Connecticut Brewing Company v. Murphy, 81 Conn. 145, 70 Atl. 450; Enterprise Brewing Co. v. Grimes, 173 Mass. 262, 53 N. E. 855; People v. Heidelberg Garden Co., 233 Ill. 290, 84 N. E. 230; In Re Brewing Co. License, 226 Pa. 56, 75 Atl. 29; In re Prospect Brewing Co., 127 Pa. 523, 17 Atl. 1090; In Re Lynch Co., 1 Boyce, Vol. 74, 75 Atl. 41."

The Idaho Supreme Court in *Ada County v. Boise Commercial Club*, 118 Pac. 1086, said:

"The appeal involves the construction and application of Section 1506. This section reads as follows:
'It shall be unlawful for any person, by himself, by agent or otherwise, to sell spirituous, malt or fermented liquors or wines, to be drank in or about the premises where sold, without having first procured a license and given a bond.'

Section 16, Revised Codes, among other things provides: 'The word "person" includes a corporation as well as a natural person.'

It is urged by counsel for appellant that inasmuch as the Legislature fails to include the term 'incorporated club' in the provisions of Section 1506, therefore, the Legislature did not intend to include such corporation within the provisions of said section. It is unnecessary to classify the character or kinds of corporations which would be required to secure a license to sell intoxicating liquors to be drank on the premises, unless the Legislature had in mind the exclusion of a particular kind or character of corporation from the operation of the statute, because it had previously been enacted and had long been a law when Section 1606 was enacted that the word 'person' included all corporations and whether the conclusion is inevitable and if the Legislature intended to exclude any particular kind of corpora-

tion they would have so declared in the section. Therefore, when the Legislature said 'any person' they intended that the words should mean the same as defined by the code and should include corporations, and if so, as clubs are corporations, the word 'person' included such club."

Note the language of the Illinois Court in *People ex inf. v. Heidelberg Garden Co.*, 233 Ill. 290, 84 N. E. 230, 1. c. 231:

"Appellant further insists that as the pleadings show that the license was issued to a corporation it was issued without authority of law; the argument being that under our dramshop act the license can not issue to a corporation. Section 1, of Chap. 131, Hurds R. S. 1905, page 1946 provides that the words 'person or persons', as well as all words referring to or importing 'persons', may extend and be applied to bodies politic and corporate as well as individual."

The court held in this case that a dramshop license may be issued to a corporation as well as an individual.

Also, the court in Massachusetts declared this, in *Enterprise Brewing Co. v. Grimes*, 53 N. E. 855:

"It is true that corporations can not be imprisoned and that one of the penalties provided by law is imprisonment, and that in some cases imprisonment is imperative. This, however, is one circumstance to be weighed with many in arriving at the true meaning of the statute. Corporations can be indicted, convicted and punished under the law by fine and by forfeiture of license. They can act only through natural persons, and the natural persons who do the illegal acts of the corporation may be punished themselves also and by the full penalties of the statute. If, as we construe the law, corporations are included in its provisions and its authorizations the impossibility of the imprisonments was no doubt considered by the legislature and in view of the liability of the natural persons who could be punished for the illegal acts of the corporation the legislature was content to provide the punishments which it did."

See also: *Conococheague Club v. State*, 81 Atl. 602 (Md);
In Re D. W. Lynch Co., 75 Atl. 41 (Del.);
In Re Pollard, 17 Atl. 1087
In Re Prospect Brewing Co., 17 Atl. 1090.

The above cases sustain the proposition that corporations may be granted licenses the same as persons under statutes similar to the Missouri Liquor Control Act.

III.

Section 27, of the Liquor Control Act of Missouri, provides:

"No person shall be granted a license hereunder, unless such person is of good moral character and a native born or naturalized citizen of the United States of America, and a qualified legal voter and taxpaying citizen of the county, town, city or village wherein such person seeks a license hereunder; and no person shall be granted a license or permit hereunder, whose license as such dealer has been revoked, or who has been convicted, since the ratification of the Twenty-first Amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, or who employes or has employed in his business as such dealer, any person whose license has been revoked or who has been convicted of violating the provisions of any such law since the date aforesaid."

A similar section, appearing in the former dramshop law of Missouri, has been construed by our Supreme Court and by the St. Louis Court of Appeals. In the case of *State ex rel. v. Scott*, 96 Mo. App. 620, the court had before it an application for a license on the part of a partnership. Bland, P. J., said (l. c. 623-24):

"Section 2993, Revised Statutes 1899, restricts the granting of a dramshop license to a 'law-abiding, assessed, taxpaying, male citizen above twenty-one years of age.' There is no authority to grant a license to a partnership as such, in the partnership name, as was done in this instance. Where the application is made by a co-partnership the application

should be made in the name of the individual members of the partnership. Each member should sign the application and he should fill the statutory requirements, that is, he should be a law-abiding, assessed, taxpaying, male citizen above twenty-one years of age, and the license should be issued to the individuals doing business under the partnership name."

And in the case of *State v. Missouri Athletic Club* (Sup. Ct. Mo.), 170 S. W. 904, the Supreme Court had before it for consideration the application of an incorporated social club. Judge Walker said (l. c. 910):

"Despite all of this, and leaving out of consideration any discussion as to its moral or hygienic effect, as out of place in a legal opinion, we find that the framers and interpreters of our law, from the dawn of our jurisprudence, both here and elsewhere, have regarded liquor as an Ishmaelite among the products of man's ingenuity, and have placed its sale under the ban of carefully worded restrictions. It no sooner creeps out of the still, the winepress, or the brewing vat than the exciseman demands tribute for its being, and before it can be vended taxes ad valorem and for the privilege of sale must be paid; but this is not all, upon leaving the warehouse of the wholesaler, the retailer, before dispensing it, must take out a license as a dramshop keeper. Section 7188, supra. This is an individual privilege, which can only be granted to 'a law-abiding, assessed taxpaying male citizen above twenty-one years of age.' Section 7191, R. S. 1909; *State ex rel. v. County Court*, 66 Mo. App. loc. cit. 100; *State ex rel. v. Page*, 107 Mo. App. loc. cit. 216, 80 S. W. 912. And it cannot be granted to a partnership (*State ex rel. v. Scott*, 96 Mo. App. 620, 70 S. W. 736), nor to a corporation, because the latter does not possess the requisites expressly required of an applicant, viz, age, character, and sex--reaching its majority when its incorporation is affected, its age cannot be measured by years; being intangible, it can have no character; and for a like reason, more materially expressed, having no body to be kicked, it is sexless. It therefore lacks three out of the four statutory requisites essential to a qualified applicant for a dramshop license.

"By necessary and inevitable exclusion, therefore, it being impossible, under the law, for social clubs to procure licenses, and the sale of liquor being a limited privilege, no implied or other power exists authorizing corporations of this character to make sales. Further, an implied power in a corporation to do an unlawful act cannot exist; and if liquor be sold without license over a mahogany table, in glass of finest crystal, under a silken canopy in a palace, it is none the less a crime, under a fair and impartial interpretation of the law, than an unauthorized sale over a deal board in a hovel that would put 'Shanahan's ould Shebeen' to shame."

However, we respectfully submit that the above constructions of the ancient dramshop law are not binding on us here in the construction of the Missouri Liquor Control Act for the reason that the two acts are strangers in substance and spirit and completely lacking in uniform contemplation.

The dramshop law of Missouri provided for the regulation of dramshop keepers and defined a dramshop keeper as "a person permitted by law, being licensed according to the provisions of this chapter, to sell intoxicating liquors in any quantity, either at retail or in the original package, not exceeding ten gallons." Under this law the dramshop keeper was required to make application for a license and "if the (county) court shall be of the opinion that the applicant is a law-abiding, assessed taxpaying male citizen above twenty-one years of age, the court may grant a license for six months."

By another section of this law it is provided "that no person, firm or corporation, or agent, employee or representative of any person, firm or corporation engaged in the manufacture of malt or spirituous liquors, or the sale as a wholesaler or jobber of malt or spirituous liquors shall be licensed to keep a dramshop". Except for this section, there is no mention of corporations in the act relating to dramshops. Under a separate article entirely licenses are provided for manufacturers, rectifiers, wholesale and retail dealers other than dramshop keepers. However, the construction of the Supreme Court in the Missouri Athletic Club Case had to do only with the dramshop law proper.

The construction of the Supreme Court with reference to the dramshop law should not be construed as binding on us here; for while the section of the law is similar to the one here under consideration, nevertheless, the whole act with which it was construed was an entirely different act. We must of necessity here construe Section 27 with reference to the Liquor Control Act of Missouri and not with the ancient dramshop law.

"It is an elementary rule that the construction of a statute is to be made from all its parts together and not of one part only by itself. Endlich on Interp. of Stat. Sec. 35."

Litson v. Smith, 68 Mo. App., 1. c. 402.

The Liquor Control Act of Missouri makes notice of corporations throughout its pages. In Sections 10, 18, 21, 22, 22-a, 31, 32 and 33 corporations are noticed and provisions made for their regulation. In addition, Sec. 43-a provides:

"The term 'person' as used in this act shall mean and include any individual, association, joint stock company, syndicate, co-partnership, corporation, receiver, trustee, conservator or other officer appointed by any State or Federal Court."

This is a clear expression on the part of the Legislature that a corporation should be within the meaning of the act. No such provision, however, is to be found in the dramshop law construed by the Supreme Court.

It is recognized that a corporation does not possess good moral character; nor is it a native born or naturalized citizen; neither is it a qualified legal voter. Therefore, Section 27 must be construed as not being applicable to corporations in so far as the section requires information as to the above, and that the information required was only intended to be required of a single individual.

If a corporation be held not within the contemplation of the act, certain sections of the law would be meaningless. For example, in Section 22 it is provided:

"For every license issued to any railroad company, railway sleeping car company or dining car company operated in this state, for sale of all kinds of intoxicating liquor, as herein defined, at retail for consumption

on its dining cars, buffet cars and observation cars, the sum of one hundred (\$100.00) dollars per year. Provided that said license shall not permit sales at retail to be made while said cars are stopped at any station; and provided further, that a duplicate of such license shall be posted in every car where such beverage is sold or served, for which the licensee shall pay a fee of one (\$1.00) dollar for each duplicate license."

We may safely assume that the courts will take judicial knowledge that railroad companies, railway sleeping car companies and dining car companies are, in most instances, incorporated. Certain it is that they are not operated by a single individual. If then, the law does not contemplate the issuance of licenses to corporations, this provision of the law is useless.

As a further indication of the intent of the General Assembly to include corporations, it is provided in Section 18:

"It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as herein defined, in any quantity, without taking out a license."

This is an unambiguous expression on the part of the General Assembly, and we conclude, therefore, that it was the intention of the General Assembly to provide for the issuance of licenses to corporations subject to the provisions of the act. "This in accord with that well established rule, consistent with reason, that a statute should be so construed as to render it operative." State v. Long (Mo.) 204 S. W., 1. c. 916.

"The purpose for which a law was enacted is a matter of prime importance in arriving at a correct interpretation of its parts. A statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other will defeat such manifest object, it should receive the former construction. People v. Hinrichsen, 161 Ill. 223, 43 N. E. 973."

Lewis - Sutherland - Stat. Const., Vol. II, p. 711.

IV.

A corporation may do only that which is provided in its charter or included in its corporate powers.

In *Julian v. Kansas City Star Co.*, the Supreme Court of Missouri, en Banc, 209 Mo. 35, said this relating to corporations (L.c. 67):

"The corporation is an artificial being, possessing only the rights that the State has granted and bearing the burdens that its charter imposes.

The State in issuing the charter may impose its own terms, and, when accepted, the corporation is bound by the terms; if terms are imposed in the charter that result in placing the corporation in a position less favorable than individuals would occupy in relation to the same subject, the corporation cannot complain because it is one of the conditions on which its right to be a corporation was granted."

In *Bassen et al. v. Monckton et al.*, 272 S. W. 404, l. c. 407, the Supreme Court of Missouri said:

"A corporation is an artificial person, and has no natural rights."

Also, in *Wyatt v. Stillman Institute*, 260 S. W. 73, l. c. 76, the Supreme Court of Missouri said:

"A corporation as to its character is to be judged by the objects of its creation as expressed in its charter."

In *State ex inf. v. Missouri Athletic and St. Louis Clubs*, supra, the Supreme Court of Missouri used this language (l. c. 598 et seq.):

"It will be recalled that Chief Justice Marshall said in the *Dartmouth College* case (4 Wheat. (U. S.) 518, 636) among other things that have become maxims, that 'a corporation being the mere creature of the law possesses only those properties which the charter of its

creation confers upon it, either expressly or as incidental to its very existence;' and the Supreme Court of Minnesota has held that the same rule is applicable to articles of incorporation which are analogous to a charter (Gould v. Fuller, 79 Minn. 414); so that by express judicial declaration the doctrine as to the limitation of the powers of a corporation within the instrument of its creation has been made to apply to every class of incorporated association, whether it be organized for business, moral, intellectual or benevolent purposes or to promote social intercourse. Incidental powers, as the term is employed by Chief Justice Marshall, mean such as are directly and immediately appropriate to the execution of the powers expressly granted, and exist only to enable the corporation to carry out the purpose of its creation. (Hood v. Railroad, 22 Conn. 1; People v. Chicago Gas Trust Co., 130 Ill. 268; State ex rel. v. Newman, 51 La. Ann. 833.) Such powers are not invoked by respondent, however, and their discussion is superfluous. But the implied powers are of moment. They are defined to be those possessed by a corporation not indispensably necessary to carry into effect others expressly granted, and comprise all that are appropriate, convenient and suitable for that purpose, including, as an incidental right, a reasonable choice of the means to be employed in putting into practical effect this class of powers. Broad as this definition seems, and it is the resume of an exhaustive review of many cases by eminent text-writers, we find it nowhere more lucidly and comprehensively considered than by Burges, J., speaking for this court in State ex inf. Crow v. Lincoln Trust Co., 144 Mo. 1. c. 583 et seq., where, after reviewing our own cases on this subject, as well as those of other jurisdictions, the substance of the court's conclusion is that it is a settled rule of construction that legislative grants of power to corporations, public or private, only include such rights and powers as are clearly comprehended within the words of the act of their creation or may be derived therefrom by necessary implication, regard being had to the objects of the grant;

and if ambiguities or doubts arise, the terms used in the statute must be resolved in favor of the public; that if the powers conferred are expressly enumerated, this, under the maxim of *expressio unius, etc.*, implies the exclusion of others not enumerated. Graves, J., speaking for this court in *Hanlon Mill. Co. v. Miss. Valley Trust Company*, 251 Mo. 1. c. 575, said, in substance; That a corporation possessed only such powers expressed in or that may be fairly implied from the statute of its creation; that powers enumerated imply the exclusion of all others; and that any doubt or ambiguity respecting the possession of any particular power arising out of the terms of the statute is to be resolved against its possession, or, as Burgess, J., aptly said in the *Lincoln Trust Co.* case, *supra*, 'It must be resolved in favor of the public.'

V.

CONCLUSION.

From the above and foregoing, we conclude, and it is our opinion, that Section 27 of the Liquor Control Act is only applicable to an individual (the word "person" includes partnership as well as individual) seeking a license to manufacture, distill, blend, sell, deal, handle etc., intoxicating liquor, as defined in the Act. And if a license is granted to an individual he is subject to the other provisions and requirements of the Liquor Control Act.

Having thusly determined the above, it follows that Section 27 is not a barrier, limitation or condition precedent in the obtaining of a license by a corporation. However, in order for a corporation to manufacture, distill, blend, sell, deal, handle etc., intoxicating liquors, as defined, the right to do so must be permitted in the corporations charter and be a part of its corporate powers.

It is our further opinion that the Supervisor of Liquor Control shall promulgate rules, regulations, qualifications, conditions, terms and requirements upon which the corporation shall be licensed. And when a corporation possesses the qualifications under the Act, and those required by the Supervisor, a license may be granted to it. The corporation is subject, however, to the other provisions (requirements) of the Liquor Control Act, including Section 27 insofar as it is applicable.

Respectfully submitted,

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