

LIQUOR CONTROL ACT: Country club is not entitled to a license to sell intoxicating liquor by the drink unless located in city where sale by drink is authorized

3-13

March 12, 1934.



Hon. Fred A. Boxley, Counselor,
County Court Jackson County,
1112 Commerce Building,
Kansas City, Missouri.

Dear Sir:

This department is in receipt of your letter of March 3, requesting an opinion as to the following state of facts:

"The County License Inspector of Jackson County has asked me for an opinion as to whether or not Country Clubs, having a charter but lying outside of the city limits of Kansas City and outside of the corporate limits of any city, are entitled to a license to sell liquor by the drink to be consumed on the premises.

"As I read the law, there is no provision whatever to cover such a case. Section 4525g-15 seems to actually prohibit such sales. Have you given an opinion on this subject?

"Our Country Clubs would very much like the privilege of selling by the drink. They are built out in the country where it is necessary to go to have golf clubs. I think there are only two of them where the club houses are within the city limits."

I.

Country Clubs situated outside the corporate limits of a city of 20,000 inhabitants are not entitled to a license to sell liquor by the drink to be consumed on the premises.

When analyzing the various provisions of the Liquor Control Act the ruling of the Supreme Court of Missouri, en banc, in the case

of State v. Parker Distilling Company, 236 Mo. 219, l.c. 274, should be kept in mind:

"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."

Section 22 of the Act provides:

*****Provided however, that no license shall be issued for the sale of intoxicating liquor in the original package, not to be consumed upon the premises where sold, except to a person engaged in, and to be used in connection with the operation of one or more of the following businesses: A drug store, a cigar and tobacco store, a grocery store, a general merchandise store, a confectionery and/or delicatessen store, nor to any such person who does not have and keep in his store a stock of goods having a value according to invoices of at least fifteen hundred (\$1500.00) dollars, exclusive of fixtures and intoxicating liquors.*****

A Country Club can hardly qualify as a drug store, a cigar and tobacco store, etc., as required by the Act, and therefore no license could be issued authorizing a Club to sell intoxicating liquor in the original package.

Section 13-a of the Liquor Control Act provides:

*****Provided, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold, in any incorporated city having a population of less than twenty thousand (20,000) inhabitants,*****

"Provided further, that no license shall be issued for the sale of intoxicating liquor,

other than malt liquor containing alcohol not in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold, outside the limits of such incorporated cities.***"

This section definitely prohibits the issuance of a license to sell intoxicating liquor by the drink at retail for consumption on the premises where sold, other than malt liquor containing alcohol not in excess of 5% by weight outside the limits of incorporated cities. In other words, intoxicating liquor may be sold by the drink for consumption on the premises only in cities having a population of 20,000 inhabitants or more, or in cities where sale by the drink has been authorized by vote of the people.

CONCLUSION

We recognize that it is usually necessary for Country Clubs to be located outside the limits of the city from which the membership is drawn, and that the members, living in a city wherein it is permitted to sell intoxicating liquor by the drink, would like the same privilege for their club; however, "the propriety, wisdom, and expediency of legislation enacted in pursuance of the police power is exclusively a matter for the Legislature" (Star Square Auto Supply Co. v. Gerk, 30 S.W. (2d) 447, l.c.462) and we are constrained to hold that a Country Club, unless it be located in a city wherein sale by the drink is authorized, is not entitled to a license to sell intoxicating liquor other than malt liquor having an alcoholic content of not in excess of 5% by weight.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General