

LIQUOR CONTROL ACT: St. Francois Recreation Club cannot sell on premises
intoxicating liquor other than malt liquor
containing alcohol not in excess of 5% by weight

3-16

March 13, 1934.



Hon. Thomas A. Mathews,
Prosecuting Attorney,
St. Francois County,
Farmington, Missouri.

Dear Sir:

This department is in receipt of your letter of
February 20 requesting an opinion as to the following state
of facts:

"We are herewith sending you a copy of agree-
ments of the St. Francois County Recreation
Club and also the petition for a Pro Forma
Decree of Incorporation, and Pro Forma Decree
No. 8211 granted by Honorable I.N. Threlkeld,
Judge of the 27th Judicial District, at that
time, and Ex-officio Judge of the St. Francois
County Circuit Court, rendered on Saturday,
June 22, 1929.

"This Recreation Club, as you will see, was
organized under and by virtue of Article 11,
Chapter 90, R.S. Missouri, 1919 for benevolent,
religious, scientific, fraternal and beneficial
and educational purposes; anyone may become a
member of said Club by the payment of One Dollar
(\$1.00), and he is thereupon issued a membership
card to said club.

"It is our understanding that someone connected
with this Club, and as we are informed, one A.G.
Murphy, has been licensed by the Supervisor of
Liquor Control of this State, under and by virtue
of an act of the Special Session of the Legisla-
ture of Missouri, said act being a committee
substitute for Senate Bills Nos. 621-22-23-24-25,
of the 57th General Assembly.

"You will observe by reading the document herewith
sent, that there is no mention in any of these
documents for authority conferred by said club, for
the sale of intoxicating liquor mentioned and pro-
vided for in said Committee Substitute.

"We are further informed that said Club, by its officers and agents, are seeking to get proper license to sell intoxicating liquor, from the County Court of this county.

"It is our opinion that if license have been issued by the Supervisor of Liquor Control, that the issuance of said license is contrary to said Committee Substitute; and further that if and when such application to sell intoxicating liquor, under said Committee Substitute was made to the County Court of this County, that said County Court will have no legal right or authority to issue said license.

"We, as Prosecuting Attorney and Assistant Prosecuting Attorney of St. Francois County, Missouri, are asking you to give your written opinion as to the legal right of said Club or any agent thereof, to receive from the State Supervisor of Liquor Control, a license to sell liquor of any kind or nature mentioned in said law. We are further of the opinion that the County Court of St. Francois County, has no right to issue license to said club or any agent thereof, for the sale, in St. Francois County, of intoxicating liquor, provided by the said Committee Substitute."

Article II of the Articles of Agreement of the Club states that the location of the club "shall be in the County of St. Francois, State of Missouri". We may assume, therefore, that the club is not located in a city having a population of 20,000 inhabitants.

Section 13-a of the Liquor Control Act of Missouri 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."

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Section 22 of the Liquor Control 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. ****

CONCLUSION

In view of the foregoing, it is the opinion of this department, based upon the facts as set out in your letter, that since the St. Francois County Recreation Club cannot qualify under the above section of the Liquor Control Act, intoxicating liquor other than malt liquor containing alcohol not in excess of 5% by weight may not be sold on the premises.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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