

LIQUOR CONTROL ACT: County Court has no authority to grant a license unless Sec. 27 of the Liquor Control Act be complied with.

August 24, 1934.



Honorable Lee Mullins,
Prosecuting Attorney,
Atchison County,
Rockport, Missouri.

Dear Mr. Mullins:

This department is in receipt of your request for an opinion as to the following state of facts:

*****Gilkerson made application to the superintendent of Liquor Control and secured the necessary license for sale of liquor in the original package in said building and has made application to the County Court of this county for a county license, in which, of course, he certified in said application that he was a citizen of the United States and a qualified, legal voter and tax-paying citizen of Atchison County, Missouri, and that he was of good moral character and so forth. In the meantime, the court learned that said Gilkerson was neither a citizen of Atchison County, legal voter nor taxpayer, but he was such in Buchanan County, Missouri, whereupon the county license was refused.

*****The court would really like to have such license fees as they may be entitled and in view of the fact that 'bootleggers' are still in business up in this section, they would really grant a license to this man were it not for the apparent in-surmountable obstacles in the language of this statute."

Section 27 of the Liquor Control Act of Missouri provides in part:

"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 voter and taxpaying citizen of the county, town, city or village wherein such person seeks a license hereunder; ****"

The question now under consideration is whether or not the requirements of this section of the law are mandatory or whether or not they are directory only. It should be remembered, as was held in the case of Higgins v. Talty, 157 Mo. 280, that a dramshop license is a mere permit--not a contract between the State and the licensee in which the latter has no vested rights, but is subject at all times to the police power, and it is revocable at any time the State may see proper to do so for any violation of law, whether the license so provides or not.

Judge Burgess, in the case of State v. Seebold, 192 Mo. 727, said:

"It is fundamental that no one has the natural right to sell intoxicating liquor because the tendency of its use is to deprave public morals, and to do so without a license from proper authority is unlawful."

Fortunately, a statute similar to the one now under consideration was passed upon by the courts of this state during the period of the existence of the "dramshop law". Judge Walker, in the case of State ex inf. v. Missouri Athletic and St. Louis Clubs, 261 Mo. 576, in discussing the requisites necessary to obtaining a permit under the old dramshop law, said:

"This is an individual privilege which can only be granted to 'a law abiding, assessed, taxpaying male citizen over twenty-one years of age.'"

In the case of State ex rel. v. County Court, 66 Mo.96, Judge Ellison said (l.c. 99-100, 101):

"Section 4 of the dramshop act, Laws 1891, page 128, declares: 'Application for a license as a dramshop keeper shall be made in writing to the county court, and shall state specifically where the dramshop is to be kept, and if the court shall be of the opinion that the applicant is a law-abiding, assessed, taxpaying citizen, above twenty-one years of age, the court may grant a license for six months. ****'

We interpret that language to mean that the court only has authority to grant a

license to a person who is a law-abiding citizen, an assessed taxpayer and a male over twenty-one years old; and that if the court should grant a license to one who was not found by the court to be a law-abiding, male, assessed, tax-paying citizen, over twenty-one years of age, the license would be void. Unless the person applying for the license was found to fill the description prescribed by the statute, the court would have no authority to grant the license.

But, in our opinion, jurisdiction does not attach in the county court to grant a license except upon the application of 'a law-abiding, assessed, taxpaying, male citizen, above the age of twenty-one years'. If the applicant was a female, or was a minor, or lacked the other qualifications mentioned, the court would be without jurisdiction, for they have no power to hear an application from such a party. If the record disclosed such a party, the court could strike the application from the files."

CONCLUSION

In view of the foregoing, it is the opinion of this department that Section 27 of the Liquor Control Act must be strictly complied with, and unless the person applying for the license be found to fill the description prescribed by the statute, the county court has no authority to grant the license.

Respectfully submitted,

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APPROVED:

JWH:AH

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