

LIQUOR CONTROL ACT: Intoxicating liquor may be sold in original package not for consumption on premises anywhere in Missouri when proper licenses are obtained.

Definition of "city" in Sec. 13-a applicable to whole Act.

County court has only power to issue licenses - cannot regulate

February 22, 1934.

2-24



Hon. Owen C. Rawlings,  
Prosecuting Attorney,  
Marshall, Missouri.

Dear Sir:

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

"I realize that this writing may be one among a great many others inquiring as to the interpretation of your office as to the new Liquor Control Act, and, with this in mind, I am reluctant in sending it. However, the County Court of Saline County is urging that I ascertain as to one point in particular in order that they may proceed at once with the matter of fixing a license fee for retail sale in the county, and the issuance of licenses thereunder.

Can package liquor be sold any where in the county, both within and without the corporate limits of a city or town, or can such sales be only within such corporate limits? Does the definition of the term incorporated city or town, as set out in Section 13A, of the Act, being lines twenty-five to twenty-eight inclusive, on page eight, properly define the term 'city' with reference to and as used in all other parts of the Act?

Can the county courts, and boards of aldermen, city councils, and other proper authorities of incorporated cities take into consideration, when issuing license for the sale of intoxicating liquor in packages, not to be opened or consumed on the premises where sold, take into consideration the question as to whether or not such applicant then has, and thereafter keeps, in his store, a stock of goods having a valuation of at least \$1500.00, as provided in Section 22 of the Act; or is such matter only a consideration to be entertained by the Supervisor of the Liquor Control?

In the matter of the requisite stock of goods, provided for in Section 22 of the Act, are sugar, flour, lard and other ingredients used in cooking or preparing food for consumption in a cafe, considered a stock of goods; or must such stock consist wholly of goods that are regularly carried for sale without any additional processing?"

I.

Section 22 of the Liquor Control Act of Missouri provides:

"Intoxicating liquor shall be sold at retail in the original package upon a license granted by the Supervisor of Liquor Control, and said intoxicating liquor so sold shall not be consumed upon the premises where sold, nor the original package opened on said premises of the vendor, except as otherwise provided in this act."

It is the opinion of this department that intoxicating liquor may be sold in the original package, not for consumption on the premises, anywhere in the State of Missouri provided the proper licenses are obtained from the City, County and State.

II.

Section 13-a of the Liquor Control Act provides:

"Provided further, that for the purpose of this act, the term 'city' shall be construed to mean any municipal corporation having a population of five hundred (500) inhabitants or more."

While this definition is contained in Section 13-a and therefore would ordinarily be referable only to Section 13-a, nevertheless the words "for the purpose of this Act" permit of no other construction than to make the definition applicable to the Liquor Control Act as a whole.

III.

Section 24 of the Liquor Control Act provides:

"The County Court in each county is hereby authorized to make a charge for licenses issued to retail dealers in all intoxicating liquor, the charge in each instance to be determined by the County Court, by order of record, but said charge shall in no event exceed the amount provided for in Section 22 of this act, for state purposes."

The only power given the county court is to make a charge for licenses. The construction of a statute similar to this was before the Springfield Court of Appeals in the case of State ex rel. v. Berryman, 142 Mo. App. 373, l.c. 374. There it was held that under the simple power to "license" no authority is given to regulate or suppress. The Court said:

"Under section 5857, Revised Statutes 1899, as amended by the Act of 1907, it appears that cities of the third class are given the authority only to levy and collect a license tax on liquor sellers. This does not include the power to suppress or regulate."

Construing Section 24 of the Liquor Control Act in the light of this decision, we must conclude that the county court has only the power to "make a charge for licenses" and that this power does not include the right to regulate.

However, a different rule obtains with reference to the cities of the state. Section 25 provides:

"The Board of Aldermen, City Council, or other proper authorities of incorporated cities may charge for licenses issued to manufacturers, distillers, brewers, wholesalers, and retailers of all intoxicating liquor, within their limits, fix the amount to be charged for such license, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquor within their limits, not inconsistent with the provisions of this act, and provide for penalties for the violation thereof."

This section expressly grants authority to cities not only to license, but to regulate as well.

Section 22 of the Liquor Control Act provides in part:

"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 confectionary 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."

It will be noted that a cafe is not with the prescribed businesses that may sell liquor in the original package.

Respectfully submitted,

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APPROVED:

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