

LIQUOR CONTROL ACT: Answering six questions relating to various
phases of the Act.

March 26, 1934.



Hon. James S. Rooney,
Prosecuting Attorney,
Clay County,
Liberty, Missouri.

Dear Sir:

This department is in receipt of your letter of February 15, 1934 requesting an opinion as to the following state of facts:

"I would be pleased to have an expression of your opinion on the following questions concerning the Liquor Control Act:

1. Does the last sentence in Section Nine apply to malt liquors? Some of our restaurants here claim that they would have considerable trouble in obtaining help over 21 years of age if this is applied to malt liquor.

2. May one who sells liquor by the drink also sell intoxicating liquor in the original package?

3. Does a dealer who only sells malt liquor up to 5% have to have goods, wares, and merchandise in his place of business to the amount of \$1500.00?

4. Under Section 22 would an ordinance of a city of the Third class be legal which provided that only drug stores could sell in the original package?

5. Under Section Nine would an ordinance be legal changing the state law beginning with line five of said section to read 'intoxicating liquor shall not be given, sold, or otherwise supplied to any person under the age of 21 years; excepting upon the written instruction and direction of a physician?

6. Under Section 27 would an ordinance of a city of the Third class be legal when changed beginning with the middle of line 8 to read, 'or who has been convicted, within one year prior to making application for a license, of a violation of the provisions of any law applicable to the manufacture, or sale of intoxicating liquor, or who employs or has employed, in his business as such dealer, any person whose license has been revoked or who has been convicted of violating the provisions of any such law within one year next before the filing of such application?'"

I.

Section 9 of the Liquor Control Act of the State of Missouri provides in part as follows:

"No person under the age of twenty-one years shall sell or assist in the sale or dispensing of intoxicating liquor."

Section 17 of the Liquor Control Act provides:

"The term 'intoxicating liquor' as used in this act, shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt or other liquors, or combination of liquors, a part of which is spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of three and two-tenths (3.2) per cent of alcohol by weight."

In view of this definition of "intoxicating liquor", it is the opinion of this department that Section 9 applies to malt liquors having an alcoholic content not in excess of 5% by weight.

II.

Under the Liquor Control Act of Missouri, intoxicating liquor other than malt liquor having an alcoholic content not in excess of 5% by weight may not be sold by the drink for consumption except in cities having a population of 20,000 or more or in cities where an election has been held to determine whether or not intoxicating liquor may be sold by the drink. However, in cities where it is permitted to sell intoxicating liquor by the drink for consumption it is permissible for the same licensee to sell intoxicating liquor in the original package.

Section 22 of said Act provides as follows:

"For every license issued for the sale of all kinds of intoxicating liquor, as herein defined, at retail by the drink for consumption on the premises, the licensee shall pay to the Supervisor of Liquor Control the sum of three hundred dollars (\$300.00) per year, which shall include the sale of intoxicating liquor in the original package."

Outside the limits of these cities it is, of course, impossible to sell intoxicating liquor other than malt liquor by the drink; however, it is also impossible for a licensee authorized to sell intoxicating liquor in the original package to obtain a license to sell malt liquor having an alcoholic content not in excess of 5% by weight. Sec. 22 of the Liquor Control Act provides in part as follows:

"Provided, that a licensee authorized to sell malt liquor, at retail by the drink for consumption on the premises where sold, shall not be permitted to obtain a license for the sale of intoxicating liquors, other than malt liquor, in the original package, except in cities where the sale of all intoxicating liquors by the drink at retail for consumption on the premises where sold, is permitted by law."

III.

The condition provided for in Sec. 22 of the Act with reference to the \$1500 stock of goods is applicable only to dealers selling intoxicating liquor in the original package. Sec. 22 of the Act provides as follows:

"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."

There is no such condition attached to the sale of malt liquor, and it is the opinion of this department that it is not necessary to have a stock of goods of \$1500 in order to sell malt liquor having an alcoholic content not in excess of 5% by the drink at retail for consumption on the premises where sold.

IV.

Sec. 22 of the Liquor Control Act provides that malt liquor may be sold in the original package in connection with the operation of one or more of the following businesses: drug store, cigar and tobacco store, a grocery store, a general merchandise store, a confectionery and/or delicatessen store. An ordinance providing that only drug stores could sell intoxicating liquor in the original package would be inconsistent with the provisions of this Act and would be beyond the authority granted to municipalities by Sec. 25 of the Act and would, in the opinion of this department, be invalid.

V.

Sec. 9 of the Liquor Control Act provides that intoxicating liquor shall not be given, sold, or otherwise supplied to any person under the age of 21 years, "but this shall not apply to the supplying of intoxicating liquor to a person under said age for medicinal purposes only, or by the parent or guardian of such person or to the administering of said intoxicating liquor to said person by a physician". An ordinance providing that "intoxicating liquor shall not be given, sold or otherwise supplied to any person under the age of 21 years, except upon the written instruction and direction of a physician" would, in our opinion, limit the exceptions provided in Sec. 9 of the Act, for the reason that Sec. 9 not only provides that intoxicating liquor may be administered to a minor, by a physician, but also gives this right to the parent or guardian or for medicinal purposes only. An ordinance limiting the exceptions to the "written instruction and direction of a physician" would, in the opinion of this department, be invalid, as being inconsistent with the provisions of the Liquor Control Act of Missouri.

VI.

Sec. 25 of the Liquor Control Act provides that cities may charge for licenses, fixing the amount to be charged and providing for the collection thereof, and make and enforce ordinances for the regulation and control of the sale of all intoxicating liquor within their limits.

Sec. 27 of the Act sets out the qualifications for licensees, one of the qualifications being "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 employs 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.

An ordinance that would attempt to limit the right to a license by imposing a condition other than found in Sec. 27 would, in the opinion of this department, be inconsistent with the provisions of the Liquor Control Act of the State of Missouri, and invalid. It is clear that if the words "or who has been convicted within one year prior to making application for a license", as used in the proposed ordinance, be substituted for the words "who has been convicted since the ratification of the Twenty-first Amendment to the Constitution of the United States", as found in the Liquor Control Act of Missouri, the ordinance would be a limitation upon the rights granted under the Liquor Control Act of Missouri and would, therefore, be invalid.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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