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LIQUOR CONTROL ACT: Intoxicating liquor purchased for purpose of securing evidence to prosecute violators may be paid for out of appropriation under sub-section D, Sec. 12M Laws of Mo. (Ex.Sess) 1933-34.

525
August 23, 1934.



Honorable Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Mr. Smith:

This department is in receipt of your letter of July 7, 1934, requesting the opinion of this department as to the following state of facts:

On Page 15, Section 12 M Extra Sessions 1933-34 Missouri Laws, is an appropriation of \$100,000 to the Department of Liquor Control divided as follows:

\$50,000 for personal services
5,000 for additions
45,000 for operations

On the expense accounts filed by two of the deputies employed in that department, there appears the item, 'For purchasing liquor by the drink in Jackson County.'

I would like an opinion from your office as to whether this money expended for purchasing liquor by the drink can be paid out of this appropriation and if so, whether it will come from Additions or Operations."

Section 12 M, Laws of Missouri 1933-34 (Extra Session), page 15, provides:

"There is hereby appropriated out of the State Treasury, chargeable to the general revenue fund, the sum of One Hundred Thousand Dollars (\$100,000.00), to the Department of Supervisor of Liquor Control, to pay for personal service, additions and operating expenses required in connection with the administration of the Liquor Control Law, passed by the Fifty-seventh General Assembly, Extra Session, as follows:

A. Personal Service:

For salaries and wages of accountants, auditors, book-keepers, inspectors, stenographers, clerks and other necessary employees.....\$50,000.00

B. Additions:

Original purchase of transporting and conveying equipment, and necessary office furniture and equipment.....5,000.00

D. Operation:

General expenses consisting of communication, binding and printing, transportation of things, travel, stationery, office supplies and other general and miscellaneous expenses.....45,000.00

Total.....\$100,000.00 "

It will be noticed that the Legislature in enacting this appropriation act uses the words "to pay for personal service, additions, and operating expenses required in connection with the administration of the Liquor Control Law." Under sub-section D \$45,000.00 is appropriated for, among other things, "general and miscellaneous expenses". The question here under consideration is whether or not the Department of Liquor Control may purchase liquor under this act, the liquor to be used as evidence in the prosecution of violators of the Liquor Control Act of Missouri.

In the first place, we wish to make the observation that the courts of this State have commended the purchase of intoxicating liquor by state officers for the purpose of founding a prosecution thereon. The Court, in the case of State v. Richie, 180 S.W. 2, 1.c. 3, said:

"A sale of liquor to a person who purchases with the sole intention of securing a conviction of the seller is an offense the same as if the liquor were bought to be drunk. The fact that the purchaser gets a reward for securing the conviction does not constitute a defense, or make his evidence incompetent. The purchaser in such cases is not an accomplice in the crime. That the purchaser is an officer is immaterial in law and commendable in morals, where done to detect and suppress crime."

Section 18 of the Liquor Control Act of Missouri provides:

"It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as herein defined, in any quantity, without taking out a license."

The Supervisor of Liquor Control, by reason of Section 13, is given authority to make such rules and regulations as are necessary and feasible for the carrying out of the provisions of this act. It is the intent and purpose of the act to require every one selling intoxicating liquor in the State of Missouri to do so under the provisions of the Liquor Control Act. The enforcement of this law devolves itself upon the Supervisor of Liquor Control, and it is his duty to do everything in his power to see that this law is enforced.

It stands beyond cavil that before a person may be prosecuted for selling intoxicating liquor in this state without a license, evidence must be obtained, and the usual method of obtaining this evidence is for the deputies of the Supervisor to buy intoxicating liquor and file the evidence with the Prosecuting Attorney of the county wherein the illegal sale was made.

In construing the appropriation act here under consideration, it should be remembered that the intention of the law makers is to

be deduced from a view of the whole statute and of its every material part, and that statutes in pari materia should be construed together; the object of the rule is to ascertain and carry into effect the intention of the Legislature, and it proceeds upon the supposition that the several statutes relating to one subject were governed by one spirit and policy and were intended to be consistent and harmonious in their several parts and provisions. 25 R.C.L. 1060.

In deciding, therefore, whether or not this expense of buying evidence is properly included in the appropriation act, it is necessary to look at the Liquor Control Act to determine the intention of the Legislature. This rule is well expressed in the case of State, ex rel. Bradshaw v. Hackmann, 276 Mo. 600, wherein the Court said (l.c. 608):

"Therefore, both by an express statute and the decisions of this court, in order to ascertain where and upon what business travel may be done at the expense of the State, we are at last relegated to the law creating the office of Warehouse Commissioner.

So again we say, it is not to the appropriation act (save at times as a legislative construction, persuasive in determining the meaning of an otherwise obscure statute) that we must look, but to those statutes which created the office of Warehouse Commissioner and which define his duties, and the duties of the Grain Inspection Department of which he is the head."

And in the case of State v. Eggers, (Sup. Ct. Nevada) 136 P. 100, that Court said:

"Sections of the general appropriation act are in pari materia with the general acts controlling the purposes for which the appropriation is made. They are therefore to be considered in connection with the general provisions of law to which they relate, and unless there is such a manifest repugnance as to leave no room for reasonable construction otherwise, they will be construed so as to carry out the provisions of the general law. This is the view taken by this court in former decisions where the provisions of the general appropriation act had been called in question."

In the case of State, ex rel. Allebaugh v. Gallet (Sup. Ct. Idaho), 209 P. 723, the Court held that the general provision in the appropriation bill for the State Historical Society for expenses other than salaries was intended by the Legislature to include expenses which the Trustees might incur in the performance of their duties. The Court said:

"The appropriation being only for expenses other than salaries, without including any words showing an intent to extend the purposes for which it was made, it must be held that it is limited to making provision for the expenses specified in the charter of the Society."

In the very early case of Com. ex rel Greene, appellant, v. Gregg, et al, decided by the Supreme Court of Pennsylvania in 1894, Mr. Justice Mitchell said, in construing an appropriation bill:

"It cannot be assumed that the Constitution meant to compel the Legislature even to supervise all the details of the government. That is properly the function of the executive and judicial branches. What work there is to be done and what clerical force is requisite to do it is a question of detail as to which much must necessarily be left to the head of each department."

The intention of the Legislature, as revealed by the Liquor Control Act of Missouri, is clear and unambiguous, and technical definitions of words used in the appropriation act must yield to the will of the Legislature. "Every technical rule as to the construction or force of particular terms", said Mr. Justice Story, "must yield to the clear expression of the paramount will of the Legislature." Wilkinson v. Leland, 2 Pet. 627, 7 U.S. (L. Ed.) 542.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the purchase of intoxicating liquor for the purpose of the prosecution of violators of the Liquor Control Act of Missouri is an expense clearly authorized by the Liquor Control Act of Missouri, and as such may be properly paid under sub-section D of the appropriation act as found in Section 12 M, Laws of Missouri, (Extra Session) 1933-34.

Aug. 23, 1934.

We do not mean to say, however, that the purchase of liquor by the drink, to be consumed on the premises by the purchaser, is a proper expenditure for the reason that this expense can only be authorized where the intoxicating liquor is bought to be used as evidence--that is to say, in the original package, or some other like container, and thus capable of being filed in the office of the Prosecuting Attorney.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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