

INTOXICATING LIQUOR:

Non-resident dealer must have  
non-resident license regardless  
of fact he has a wholesale license.

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1276

December 2, 1935

Mr. W. H. Bouchard  
Chief Auditor  
Department of Liquor Control  
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter  
requesting an opinion from this office, which reads as  
follows:

"We are enclosing a letter from  
Fleishmann Distilling Corporation  
which is self-explanatory.

Our side of the case is this:  
Fleishmann holds a resident  
wholesale permit at their St.  
Louis office which according to  
our interpretation of the law,  
permits them to make sales to  
wholesalers and retail trade in  
Missouri, but they do not hold  
a non-resident permit to ship  
liquor into Missouri. We have  
notified them that it is neces-  
sary they make application for  
non-resident permit before any  
shipments can be made to their  
warehouse in St. Louis, but accord-  
ing to the enclosed letter, they  
do not seem inclined to take our  
view. Therefore, to clear up  
the case, we would like to have  
an opinion on the matter. "

Your question, as we understand it, is whether or not a non-resident liquor dealer who owns and operates a resident wholesale liquor business and has a license therefor, is required to have a non-resident license in order to do business in this state.

Section 21 of the Liquor Control Act requires every person residing without this State who shall solicit, receive or take orders for the sale of intoxicating liquors within this State to have a state license, said section reads in part,

"For the sale of intoxicating liquors by every person residing without this state, who shall solicit, receive or take orders for the sale of intoxicating liquors within this state, by a wholesale liquor dealing agent, as herein defined, the sum of one hundred (\$100.00) dollars, for handling intoxicating liquor containing not in excess of five (5%) per cent of alcohol by weight;

The sum of two hundred (\$200.00) dollars for handling intoxicating liquor containing not in excess of twenty-two (22%) per cent of alcohol by weight;

The sum of five hundred (\$500.00) dollars for handling intoxicating liquor of all kinds, for a period of one (1) year; "

We ruled in an opinion given to Honorable E. J. Becker under date of May 24, 1935, that that part of Section 21 which requires non-resident liquor dealers to take out licenses has not been repealed. That part of said section

which provides that the payment of one license fee by a non-resident liquor dealer shall include the right to solicit business in this state by as many agents as he may wish to employ, has been repealed by Section 21a-2.

Section 21a-2 makes it unlawful for any person residing without this state to solicit, receive or take orders for the sale of intoxicating liquor within this state, except by or through a duly licensed wholesale liquor dealer in this state. Said section reads, in part:

"It shall be unlawful for any person, firm, partnership or corporation residing without this state to solicit, receive or take orders for the sale of intoxicating liquor within this state except by or thru a duly licensed wholesale liquor dealer who shall be considered for the purpose of this Act as the agent of said non-resident person, firm, partnership or corporation or to haul or transport intoxicating liquor, or cause to be hauled or transported intoxicating liquor, in any manner whatsoever in or into this state, for sale, or storage and sale in this state, unless the same has been ordered by such duly licensed wholesale liquor dealer."

A resident wholesale liquor dealer is, of course, required to have a Missouri state license. Section 21 provides in part,

"For the sale of intoxicating liquor by a wholesale dealer, or a wholesale liquor dealing agent, the sum of one hundred (\$100.00) dollars, for handling intoxicating liquor containing not in excess of five (5%) per cent of alcohol by weight;

The sum of two hundred (\$200.00) dollars for handling intoxicating liquor containing not in excess of twenty-two

(22%) per cent of alcohol by weight;

The sum of five hundred (\$500.00) dollars for handling intoxicating liquors of all kinds, for the period of one year."

It is plain from the above that a non-resident liquor dealer must have a license to solicit, receive or take orders for the sale of intoxicating liquors within this state, and can only solicit, receive or take orders by or through a duly licensed wholesale liquor dealer in this state. It is also perfectly apparent that such wholesale liquor dealer must have a state license. The fact that an out state liquor dealer owns a licensed wholesale liquor business in this state, would not permit him to do business in this state as a non-resident liquor dealer. The non-resident license and the resident wholesale license are separate and distinct. A wholesale license permits the resident wholesaler to carry on a wholesale business in this state, while the non-resident license permits a non-resident to solicit business in this state by or through a wholesale dealer in this state.

#### CONCLUSION

It is, therefore, the opinion of this department that a non-resident liquor dealer who solicits, receives or takes order for the sale of intoxicating liquors within this state by or through a wholesale liquor dealer, must

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have a non-resident license, although he may own and operate a wholesale liquor business in this state and have a license therefor.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General

JET:LC