

INTOXICATING LIQUOR:

Licenses employing persons under the age of 21 years to sell or assist in the sale or dispensing of intoxicating liquors are guilty of violating Section 9 of the Liquor Control Act.

November 4, 1935.

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Hon. M. Stanley Ginn
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri

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Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"I would like to ask an opinion from your office on the following question concerning the New Liquor Law.

"FACTS: 'A is a holder of a license to sell 5% beer. He has in his employ B a minor, who, dispenses and sells the said intoxicating malt liquor, to the customers, who come into his place of business.'

"QUESTION: 'Is A guilty of a criminal offense for employing B to sell and assist in the sale of said liquor?'

"On page 32, of your interpretation of the liquor control act issued June 1, 1935, you list under the criminal law offenses number 3, 'Employing a Minor to Sell Intoxicating Liquor.' (sec.9)

"However, section 9 reads thus: 'No person under the age of 21 years, shall sell or assist in the sale or dispensing of intoxicating liquor.' Since criminal statutes are strictly construed, my question is, under the act, how the employer could be held when the law only states that 'no person under the age of 21 shall sell -----'."

We direct your attention to Section 9 of the Liquor Control Act relating to the sale or dispensing of intoxicating liquors by persons under twenty-one years of age. Said section reads 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."

This inhibition of the statute, when construed strictly, is directed to persons under the age of twenty-one years; however, it is possible for a licensee to be guilty of violating this section of the act by employing a person under twenty-one years of age to sell or aid in the sale of intoxicating liquors. The procuring or employing of persons under twenty-one years of age to sell and dispense intoxicating liquors by a licensee in his place of business, would make the licensee liable as a principal.

In the case of State v. Wagster, 75 Mo. 107, the Court had before it for consideration one Mr. Wagster who was indicted for running a horse race on a public road. Mr. Wagster was tried and convicted as a principal although he had employed another to ride his horse. The Court, in discussing the matter said at page 108:

***** Wagster made and ran the race, although Jones rode his horse. He was just as guilty as if he, instead of Jones, had ridden his horse. **** It is not necessary to cite the numerous authorities to the effect, that, in misdemeanors, all who procure or participate in their commission are principals. *****"

In the case of State v. Brown, 151 Mo. App., loc. cit. 351, the Court said:

***** Where a person acts as the clerk or agent of another in selling intoxicating liquors in violation of law, either may be indicted. *****"

Hon. M. Stanley Ginn

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Your attention is directed to Section 30 of the Liquor Control Act, which provides in part as follows:

"Any person convicted of violating any of the provisions of this act shall be adjudged guilty of a misdemeanor."

CONCLUSION.

It is the opinion of this department that "A", as stated in your hypothetical question would be guilty of violation of Section 9 of the Liquor Control Act.

Yours very truly,

RUSSELL C. STONE
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, JR.
(Acting) Attorney-General.

RCS/afj