

LIQUOR CONTROL ACT: A person cannot obtain license to sell intoxicating liquor and 3.2 beer license on the same premises.

6-14

June 14, 1935.



Hon. Alvin H. Juergensmeyer,  
Prosecuting Attorney,  
Warren County,  
Warrenton, Missouri.

Dear Sir:

This department is in receipt of your letter of recent date relative to the following questions:

"Section 2092 R.S.M. 1929 provides that mileage shall be charged by the County Judges once for each regular term.

"Question 1. At the close of the regular May term Court adjourns until the first Monday in June at which time it will adjourn until the first Monday in July. Are the County Judges entitled to mileage for the adjourned terms of court?

"Question 2. Are the County Judges entitled to mileage at a special term of the County Court?

"I should also like to have a copy of your opinion on the new liquor law, especially on the following question:

"Can a retailer in a city of more than 500 which has voted 'no' on the sale of hard liquor by the drink, obtain both a license to sell liquor in the original package and a 5% and 3.2 beer license?"

## I. - II.

"Are the County Judges entitled to mileage at a special term of the County Court?"

"Are the County Judges entitled to mileage at a special term of the County Court?"

Your first two questions relate to the mileage which may be charged by the members of the county court. On March 1, 1934 an opinion was written by Assistant Attorney General Franklin E. Reagan to Honorable W.S. Mathews, Clerk of the County Court of Lincoln County, Troy, Missouri, in which this question was decided. We are enclosing a copy of this opinion and believe that it properly answers your questions.

## III.

"Can a retailer in a city of more than 500 which has voted 'no' on the sale of hard liquor by the drink, obtain both a license to sell liquor in the original package and a 5% and 3.2 beer license?"

Section 22 of the Liquor Control Act as amended by the 58th General Assembly, provides that 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 said act.

We must next consider as to whether or not a 3.2 beer license may be obtained along with the intoxicating liquor license. Section 13139-h-1 of the Non-intoxicating Beer Law provides:

"Any person holding a permit under this article to sell non-intoxicating beer at retail, who shall have or keep or secrete in or about the premises described in and covered by his permit, any intoxicating liquor of any kind or character, or any manufacturer

or wholesale distributor who shall sell intoxicating liquor containing alcohol in excess of 3.2% by weight to any retail distributor holding a license or permit for the sale of non-intoxicating beer only, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for a term of not more than one year or by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00) or by both such fine and jail sentence."

CONCLUSION

In view of the above, it is the opinion of this department that a person cannot obtain a license entitling him to sell intoxicating liquor and also obtain a 3.2 beer license entitling him to sell non-intoxicating beer on the same premises.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

---

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

JWH:AH