

INTOXICATING LIQUORS: Licensees under a Liquor Control Act cannot form a co-partnership with others and operate under a license issued to one of partners.

7-29  
July 22, 1935.



Honorable Roy L. Kay  
Prosecuting Attorney  
California, Missouri

Dear Sir:

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

"I would like to have your opinion on the following state of facts. 'A' obtains a license from the state, county and city to sell 5% beer. Later and during the term covered by his license, 'A' forms a partnership with others, who do not have a license and the partnership continues in the business of selling 5% beer on the license obtained by 'A.' Has the new partnership as such a legal right to continue to sell 5% beer on the license issued to 'A?'"

"Section 16 of the new liquor laws of the state reads as follows; 'No license issued under this act shall be transferable or assignable.' "

It is our opinion that Section 16 of the Liquor Control Act, which you have above mentioned is inapplicable as applied to your hypothesis.

Your attention is directed to Section 21 of the Liquor Control Act, which provides in part as follows:

"No person, partnership, association of persons or corporation shall manufacture or distill in-

July 22, 1935.

toxicating liquor within this state, and no person, partnership, association of persons or corporation shall sell or give away, or offer for sale, at wholesale or retail, nor shall any person, partnership, association of persons or corporation blend intoxicating liquor, nor shall any person, partnership, association of persons or corporation, who shall import intoxicating liquor into this state, offer same for sale without first procuring a license therefor from the Supervisor of Liquor Control.

From a careful perusal of the above section you will note that a partnership is prohibited from engaging in the sale of intoxicating liquors without obtaining a license therefor. The license issued to "A" in your hypothetical question would be inoperative, inasmuch as there has been a change of condition in the licensee, that is, the licensee has formed a partnership with others who are engaged in the sale of intoxicating liquors under a license issued to "A". Therefore, the partnership would have to obtain a license.

Your attention is further directed to Section 43-a of the Liquor Control Act, which provides as follows:

"The term 'person' as used in this Act shall mean and include any individual, association, joint stock company, syndicate, co-partnership, corporation, receiver, trustee, conservator, or other officer appointed by any State or Federal Court."

It is the opinion of this Department that the partnership above mentioned has no legal right to engage in the sale of intoxicating liquors without obtaining a license, further that such partnership is liable to prosecution under the provisions of Section 43-a supra.

Respectfully submitted

APPROVED:

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Attorney General.  
RCS:H

RUSSELL C. STONE  
Assistant Attorney  
General.