INTOXICATING LIQUOR - Information for sale without license.

July 5, 1935.

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Honorable Thomas A. Mathews
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Sir:

We have your request of July 3, 1935 for an opinion, which is in part as follows:

> "On May 17, 1935, Mr. J. C. Henderson, who represents the Supervisor of Liquor Control, purchased from Thomas Baker and Marion Jones, in this county, a certain one-half pint of whiskey bearing the Federal stamp and also the Five Cent stamp issued by the Supervisor of Liquor Control. Thereafter I prepared an application for search warrant upon the information given me as a result of the purchase made by Mr. J. C. Henderson, and following the information given me and the application made on my part for a search warrant, the warrant was issued and the Sheriff then executed the warrant by searching the premises and finding 150 half pints of whiskey; 100 pints of whiskey and 33 quarts of whiskey, each bottle bearing the Federal stamp and the stamp issued by the Supervisor of Liquor Control of this State. However, he had no permit or license from the Supervisor of liquor control to sell same."

#2 - Honorable Thomas A. Mathews

It is the opinion of this office that the sellers, Thomas Baker and Marion Jones, can be prosecuted for violation of Section 18 of the Liquor Control Act on two separate charges: (1) The sale of intoxicating liquor by a person not holding a license; (2) Exposing for sale intoxicating liquor by a person without a license. The first is a felony and the punishment is prescribed in Section 21-A1, Subdivision (G). The second is a misdemeanor punishable under Section 30. To charge the first offense of selling, the following is suggested as a sufficient information:

> "Comes now _____, Prosecuting Attorney within and for _____County, Missouri, and upon his official oath informs the court that Thomas Baker and Marion Jones, at and in the County of _____, and State of Missouri, on or about the 17th day of May, 1935, did then and there unlawfully and feloniously sell intoxicating liquor without having first applied for and received a license from the Supervisor of Liquor Control authorizing the sale of intoxicating liquor; against the peace and dignity of the State."

The name of the buyer of the intoxicating liquor is not an element of the offense and need not be pleaded. State v. Leonard, 195 Mo. App. 283; State v. Brooks, 18 S. W. (2d) 16.

It is sufficient to charge a violation of the Liquor law on or about a certain day. State v. Pigg, 312 Mo. 214.

In charging the second offense in the information, which would be a misdemeanor, it will be sufficient to use the above information, leaving out the word "feloniously", and substituting "exposed for sale" for the term "sell".

It is the opinion of this office that the one pint of liquor <u>sold</u> is sufficient to sustain the felony charge

of selling without a license, and the second charge would be based upon the liquor seized plus the testimony of J. C. Henderson that he purchased one-half pint out of the liquor seized.

We trust that you have received copies of the padlock proceedings consisting of a Bill for Injunction, Temporary Injunction and a Notice of Filing of Suit. It occurs that this would be an excellent opportunity to test the new padlock proceedings in this State.

We shall be glad to prepare any further pleadings or papers in the matter.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

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

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