

INTOXICATING LIQUOR:

A city ordinance requiring a person to take out a license for operating each bar in the same place of business is in conflict with Section 20 of the Liquor Control Act, and therefore void.

February 6, 1935. 2-6

Honorable Means Ray
Mayor
Jefferson City, Missouri



Dear Sir:

This is to acknowledge receipt of your letter dated February 5, 1935, which reads as follows:

"At a meeting of the City Council of Jefferson City last night, an ordinance was passed that requires persons operating more than one bar in the same building to take out two liquor licenses.

"It has been brought to my attention that this is in conflict with the state law, which requires only one state license on the premises.

"I fully realize that the City can not pass an ordinance in conflict with the state law and I respectfully ask you to advise me as soon as possible if the state law permits two service bars on the same premises, with but one license."

Section 20, Laws of Missouri (Extra Session) 1933-1934, pages 83 and 84, provides as follows:

"On approval of the application and payment of the license tax herein provided, the Supervisor of Liquor Control shall grant applicant a license to conduct business in the state for one year from date of the license. A separate license shall be required

for each place of business. Every license issued under the provisions of this act shall particularly describe the premises at which intoxicating liquor may be sold thereunder, and such license shall not be deemed to authorize or permit the sale of intoxicating liquor at any place other than that described therein."

Section 25. (Liquor Control Act), Laws of Missouri, (Extra Session) 1933-34, page 88, reads:

"The Board of Aldermen, City Council or other proper authorities of incorporated cities may charge for licenses issued to manufacturers, distillers, brewers, wholesalers, and retailers of all intoxicating liquor, within their limits, fix the amount to be charged for such license, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquor within their limits, not inconsistent with the provisions of this act, and provide for penalties for the violation thereof."

Section 7289. R. S. Mo., 1929, reads as follows:

"Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject."

Under the provisions of Section 20, supra, only one license is required for each place of business. From your

letter, I understand that the City Ordinance requires a person to take out a license for each bar operated by him even though they be operated in the same place of business.

In the case of St. Louis v. Tielkemeyer, 226 Mo. 1.c. 140, the Court said:

"It is insisted by appellant that the city ordinance in question is void because inconsistent with the State statute on the same subject.

"The city of St. Louis has express authority under its charter 'to license, tax and regulate . . . saloons, beer houses, tippling houses, dram-shops and gift enterprises.' (Art. 3, sec. 26, clause 5.)

"The State, however, has the sovereign power to regulate those matters and its authority being paramount, it follows that a city ordinance is not valid if it is in conflict with the law of the State on the same subject. ****"

In view of the statutes and the construction placed on them by the courts, we are of the opinion that a city ordinance requiring a person to take out more than one license for operating more than one bar in the same place of business would be in conflict with Section 20 of the Liquor Control Act, which only requires one license for each place of business. We are therefore of the opinion that a city ordinance requiring two licenses for the same place of business is void because inconsistent with the State's statute on the same subject.

Very truly yours,

APPROVED:

ROY McKITTRICK
Attorney-General.

JOHN W. HOFFMAN, Jr.
Assistant Attorney-General.

JET/JWH/afj