

INTOXICATING LIQUOR - License should not be issued to partnership unless all the members have the required qualifications.

August 19, 1936



Honorable Lee E. Crook
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Osceola, Missouri

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office, which reads as follows:

"I have been called upon to construe Section 27, Liquor Laws of 1935, page 21, of the pamphlet sent out by the Department of Liquor Control and Section 43-A, page 31, same subject. The real question at issue is a co-partnership of two individuals have made application for a license in Appleton City, Missouri, to sell liquor in the original package, one of them is of good moral character, a qualified legal voter and tax paying citizen of Appleton City, the other member of the co-partnership is a non-resident of St. Clair County and does not meet the qualifications required under Section 27. Can a license be legally issued to this co-partnership?"

Section 27 of the Liquor Control Act, about which you inquire, reads as follows:

"No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the

managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village; and no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, or who has been convicted, since the ratification of the Twenty-first Amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, or who employs in his business as such dealer, any person whose license has been revoked or who has been convicted of violating such law since the date aforesaid."

Section 43-a defines "person" as used in the Liquor Control Act to 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.

That a partnership may not engage in the sale of intoxicating liquor without first obtaining a license authorizing it to do so is evident by Section 18 of the Liquor Control Act, which provides:

"It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as herein defined, in any quantity, without taking out a license."

Your question, as we understand it, is whether or not all the members of a co-partnership are required to have the qualifications for a license specified in Section 27, supra. A partnership, strictly speaking, is not a legal entity, and the members thereof are severally as well as jointly liable for the acts of any of the co-partners.

In construing the dramshop law, which restricted the granting of a dramshop license to a law abiding,

assessed, taxpaying male citizen above twenty-one years of age, the court, in the case of State ex rel. v. Scott, 96 Mo. App. l.c. 624, said:

"There is no authority to grant a license to a partnership as such, in the partnership name, as was done in this instance. Where the application is made by a co-partnership the application should be made in the name of the individual members of the partnership. Each member should sign the application and he should fill the statutory requirements, that is, he should be a law-abiding, assessed, taxpaying, male citizen above twenty-one years of age, and the license should be issued to the individuals doing business under the partnership name."

We think the case of State ex rel. Reider v. The Moniteau County Court, 45 Mo. App., 387, further supports the contention that all the members of a partnership should have the necessary qualifications before obtaining a license. The court, at l.c. 396, said:

"We discover no reason why a license, in the discretion of the county court, should not be granted to two persons, if they jointly apply and are jointly petitioned for. The character of the applicants can be ascertained when applying jointly as when singly. By the terms of the statute the license is confined to one place and one dramshop; allows but the one business, is not transferable, and I can perceive of nothing in the objection which is against the policy of the dramshop law. It may be suggested that the same section concerning singular and plural numbers also declares that persons shall include bodies corporate as well as individuals; but here the saving clause (above quoted) of the repugnancy to such construction would doubtless apply; for difficulties in such case as to proof

Honorable Lee E. Crook

-4-

August 19, 1936

of character and punishment for violation of the law would present themselves."

CONCLUSION.

In view of all the above, it is the opinion of this department that a license to sell intoxicating liquor should not be issued to a partnership unless all of the members thereof have the qualifications specified in Section 27 of the Liquor Control Act. It is our further opinion that a license should not be granted to a partnership as such in the partnership name, but should be issued to the individuals composing the partnership and doing business under the partnership name.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
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