

INTOXICATING LIQUOR: No provision licensing persons for sale of intoxicating liquor and beer on boats or vessels.

March 10, 1937.



Mr. Wallace I. Bowers,  
Chief Clerk,  
Department of Liquor Control,  
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of March 2, 1937, which reads in part as follows:

"May this department issue 5% and 3.2% beer permits to owners of boats, operating on navigable waters in this state? In this same instance, may this department issue by the drink permits, issued to Railroads in this state, costing \$100.00 per year as provided in Section #22 of the Liquor Control Act?"

The cardinal rule of construction of statutes is to arrive at the legislative intent. There is no provision in the Liquor Control Act specifically providing for the licensing of any person or persons to sell intoxicating liquors or beer on navigable waters within this state.

Section 20 of the Liquor Control Act provides in part:

" \* \* \* \* \*  
"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 5 of the same Act provides:

"No person, agent or employee of any person in any capacity shall sell intoxicating liquor in any other place than that designated in the license, or at any other time or otherwise than is authorized by this act and the regulations herein provided for."

A similar provision provides for the licensing for sale and consumption of beer on the premises.

Section 13139e, part (c) of the Liquor Control Act provides:

"For a permit authorizing the sale of non-intoxicating beer for consumption on premises where sold, Twenty-five Dollars (\$25.00)."

It is impossible to issue a liquor license to persons for the sale of intoxicating liquor and beer on boats or vessels upon navigable streams in this state for the following reasons:

1st. In view of the above provisions of the Liquor Control Act requiring that each license describe the premises at which such liquor or beer may be sold thereunder, there is no conceivable way that one could describe, with particularity, the premises in a liquor permit for the sale on boats or vessels. Premises, as construed in the majority of cases, refers to real property located on land, which may be referred to as being located at a certain street number in some town or city.

2nd. Section 25 of the Liquor Control Act provides that counties and incorporated cities may charge for a license.

Section 25 of the Act provides:

"In addition to the permit fees and license fees and inspection fees by this act required to be paid into the state treasury, every holder of a permit or license authorized

by this act shall pay into the county treasury of the county wherein the premises described and covered by such permit or license are located, or in case such premises are located in the City of St. Louis, to the collector of revenue of said city, a fee in such sum (not in excess of the amount by this act required to be paid into the state treasury for such state permit or license) as the county court, or the corresponding authority in the City of St. Louis, as the case may be, shall by order of record determine, and shall pay into the treasury of the municipal corporation, wherein said premises are located, a license fee in such sum, (not exceeding one and one-half times the amount by this act required to be paid into the state treasury for such state permit or license), as the law-making body of such municipality, including the City of St. Louis may by ordinance determine. 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, located within their limits, fix the amount to be charged for such license, subject to the limitations of this act, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, provide for penalties for the violation of such ordinances, where not inconsistent with the provisions of this act."

It is not hard to understand what difficulties would arise, in view of this provision. There is hardly a navigable stream that does not flow through several counties in this state. It would be very difficult to regulate and control such licensing, if allowed. There would be no fixed place of business other than on some designated body of water. Such a license was never contemplated by the Legislature in the enactment of the Liquor Control Act.

With regard to the latter part of your request, we assume you have reference to the licensing of persons for sale of intoxicating liquor and beer on boats and vessels under the same provision applicable to railroads, which reads as follows:

Sec. 22, in part:

"For every license issued to any railroad company, railway sleeping car company operated in this state, for sale of all kinds of intoxicating liquor, as herein defined, at retail for consumption on its dining cars, buffet cars and observation cars, the sum of one hundred (\$100.00) dollars per year, PROVIDED, that said license shall not permit sales at retail to be made while said cars are stopped at any station; and provided further, that a duplicate of such license shall be posted in every car where such beverage is sold or served, for which the licensee shall pay a fee of one (\$1.00) dollar for each duplicate license \* \* \*."

It is impossible to construe this provision to include any business other than enumerated therein, namely, railroad company and railway sleeping car company.

It is a well known canon of statutory construction that the expression of one thing is exclusive of another.

#### CONCLUSION

In view of the foregoing, it is the opinion of this Department that the Legislature never contemplated the licensing of persons for the sale of intoxicating liquor or beer on boats or vessels on navigable streams in this state, and would, therefore, be a violation of the law to issue such license.

Furthermore, that provision with regard to licensing of a railroad company and railway sleeping car company is not applicable to boats or vessels.

Very truly yours,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney-General

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APPROVED: