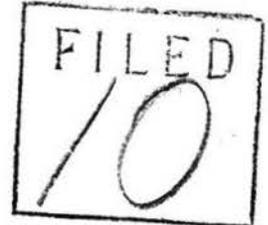


INTOXICATING LIQUOR: Place may be partitioned so as to constitute two premises, thereby permitting the sale of intoxicating liquor in original package on one premises and beer by the drink on the other, under certain conditions.

January 17, 1938

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



Dear Sir:

This will acknowledge receipt of your letter of January 6th requesting an opinion from this department, which reads as follows:

"The Supervisor respectfully requests an opinion on the following subject:

"In the Attorney General's Interpretation of the Liquor Control Act under 'premises', page #13, the following appears:

'Partitions may be run through a building which would make two separate premises, which, however, must be distinct and separate from each other, capable of being individually described in the license, so that non-intoxicating beer for consumption on the premises may be sold under a permit describing one premises which has been partitioned off, and another permit may also be issued describing the other premises for the sale of intoxicating liquors.'

"The question that is continually confronting this department is whether or not the partitions should run clear through the building, that is, from front to rear, or through only part of the building.

"We have already ruled that the partition must be of solid wood with no connecting entrance

or doors, but would like to have the above opinion in order to be guided in our decision relative to the same party qualifying for both original package liquor and beer permits."

In rendering this opinion we assume you refer to persons licensed to sell intoxicating liquor in the original package on premises particularly described in the application, who at the same time are attempting to sell 3.2% non-intoxicating beer or 5% beer by the drink on the same premises described in the original package license by partitioning off one part of the building.

The law clearly prohibits in certain localities the sale of intoxicating liquor in original packages and the sale of beer by the drink on the same premises.

Section 13139z-21, Laws of Missouri, 1935, page 401, provides:

"No person having a license under the provisions of this act to sell non-intoxicating beer at retail shall be granted or permitted to hold a license to sell malt liquor containing alcohol in excess of three and two-tenths per cent (3.2%) by weight or any other kind of intoxicating liquor; nor shall any person be granted or permitted to hold a license to sell non-intoxicating beer in, upon or about the premises of any person who is the holder of a license to sell intoxicating liquor.

"Any person holding a license to sell non-intoxicating beer only who shall sell, give away or otherwise dispose of, or suffer the same to be done in, upon or about his premises any malt liquor containing alcohol in excess of three and two-tenths per cent (3.2%) by weight, or any other intoxicating liquor of any kind or character, shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than two years nor more than five years, or

by imprisonment in the county jail for a term of not less than three months nor more than one year or by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1000.00) or by both such fine and jail sentence."

Section 22, Laws of Missouri, 1935, page 274, in part, provides:

" * * * Provided, that a licensee authorized to sell malt liquor, at retail by the drink for consumption on the premises where sold, shall not be permitted to obtain a license for the sale of intoxicating liquors, other than malt liquor, in the original package, * * * ."

Section 20, Laws of Missouri, Extra Session, 1933-1934, page 83, in part, provides:

" * * * 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."

It is evident from reading Section 20, supra, that the Legislature intended that premises where intoxicating liquor was to be sold should be particularly described.

"Premises," as used in the Liquor Control Act, has many times been defined. In Words and Phrases (Third Series), Vol. 6, page 43, "premises" is defined as follows:

"Liquor Tax Law (Consol. Laws, c. 34) sec. 8, subd. 9, added by Laws 1910, c. 494, provides that no further liquor tax certificate shall be issued in any town, village, or city unless the ratio of population to certificates shall be greater than 750 to 1, but that this prohibition shall not apply to any

'premises' in which such traffic was lawfully carried on at some time within one year preceding the passage of the act, provided such traffic has not been abandoned during said period. Section 17 provides that a certificate shall be issued where the application is correct in form and does not show on its face that the applicant is prohibited from trafficking in liquors in such 'premises' by virtue of section 8, subd. 9. Relator whose hotel was situated partly in the town and partly in the city of Corning, for two years prior to 1914 had a certificate to traffic in liquors in the town of Corning, although in 1910 and 1911 he had a city license when the town was dry. Held, that the term 'premises', in section 17, means the place where liquors are authorized to be sold, and does not include relator's whole hotel, the town certificate only entitling him to sell in that portion of the building located in the town; and hence, the city ratio of certificates to population being over that fixed by statute, relator could not obtain a city certificate in 1914 upon the town voting dry, as the relator, by carrying on his business under a town license, had lost any right he might have had under the 1910 and 1911 city tax certificates. *People ex rel. Chambers v. Shults*, 149 N. Y. S. 913, 915, 87 Misc. Rep. 348."

Another definition of the word "premises," as used in the Liquor Control Act, is found in *Words and Phrases* (First Series), Vol. 6, page 5512, and reads as follows:

"'Premises,' as used in 1 Wag. St. (Ed. 1872) p. 554, sec. 29, requiring a person selling beer, cider, and native wine in less quantities than one gallon to have a license, except any wine grower selling wine of his own production in any quantity on his own premises, means the place where the wine is produced or manufactured. The premises for the production or manufacture need not necessarily be in or upon the

vineyard where the grapes are grown. A man may well have his vineyard at one place, and his wine cellar and appliances for making and producing wine at another, and this last place, where the wine is actually made and stored, would be the premises contemplated by the law. State v. Wyl, 55 Mo. 67, 68."

In Words and Phrases (Second Series), Vol. 3, page 1145, the word "premises" is defined as follows:

"The word 'premises,' as used in Rev. St. c. 29, sec. 49, commanding an officer to enter the place or premises before named and therein to search for intoxicating liquors, signifies it as a distinct and definite locality. It may mean a room or a shop or a building or a definite area, but in either case the locality is fixed; otherwise the use of the word would be misapplied. State v. Fezzette, 69 Atl. 1073, 1075, 103 Me. 467."

Therefore, from the above and foregoing we think it was unquestionably the intention of the Legislature, by using the word "premises" in the Liquor Control Act, to restrict the operation under said license to that particular place or premises as described in the license.

The sole question for determination now is, since the law clearly prohibits in certain localities the sale of beer by the drink on the same premises where intoxicating liquor in the original package is sold, is it possible to partition said premises where intoxicating liquor is sold so as to constitute two premises instead of one?

In construing statutory provisions a primary rule is to ascertain the lawmakers' intent and give the language honestly and faithfully its plain and rational meaning. Cummins v. Kansas City Public Service Co., 66 S. W. (2d) 920, 334 Mo. 672.

Another fundamental rule of construction is that all parts of an act should be made effective if possible. Elsas v. Montgomery Elevator Co., 50 S. W. (2d) 130, 330 Mo. 596.

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We are not unmindful of the fact that many times small businesses that do not require a large space within which to transact their business will both occupy one store building by running a partition through the middle, thereby making two separate places of business, but such business does not require the strict regulations as does the liquor business. The sale of liquor must be regulated for the protection of public health, morals, welfare, and safety of the people. It comes under the police power of the state. *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, 37 S. Ct. 180, 61 L. Ed. 326; *McCormick & Co., Inc. v. Brown*, State Commissioner, 286 U. S. 131, 52 S. Ct. 522, 76 L. Ed. 1017. The courts in construing liquor laws relating to the enforcement have been very liberal in favor of the state.

It is the opinion of this department that each case must stand on the conditions existing at the time of the filing of an application for a license. The location and surroundings should be taken into consideration. There is no set rule that will apply in each instance. However, since the Liquor Control Act specifically prohibits in certain localities the sale of beer by the drink on the same premises where intoxicating liquor in the original package is sold, the Supervisor of Liquor Control should carefully examine each request for a license which would require a division of one premises, and not permit what in fact would be a mere subterfuge to circumvent the provisions of the Liquor Control Act. The Supervisor of Liquor Control should take into consideration with respect to the location of said premises, whether same is located in a thickly settled community, in a city, town or village, or in the county away from other business, also if said place is at all times open for business, with someone in charge, or is only there for the accommodation of customers and can be opened for an occasional sale.

Therefore, if after an investigation the Supervisor of Liquor Control finds the locality and surroundings of said premises will not be conducive to a disorderly house or permit violations of the Liquor Control Act, then it is the opinion of this department that if said premises is sufficiently large enough and so properly constructed as to accommodate the two businesses, it will not defeat the purpose of the Liquor Control Act to permit a solid partition (with no openings whatsoever in said partition) to divide the building in the following manner only: Said partition shall run from the front of said building to the rear of said building, from the ceiling to the floor, and be permanently affixed to the ceiling,

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floor, front and rear of said building in such a manner as to make two entirely separate and distinct premises. There shall also be a separate entrance in the front of each premises, unobstructed from view, and each premises shall have a different street address, so as to sufficiently indicate that said businesses are run separate and distinct from each other and not in conjunction with each other.

Yours very truly,

AUBREY R. HAMMETT, Jr.,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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