

INTOXICATING LIQUOR: No one can sell intoxicating liquor without first having obtained a license

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January 25, 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 requesting an opinion from this Department which reads as follows:

"Please favor this department with an opinion on the matter mentioned below:

"The Adjustment Bureau of Kansas City Association of Credit Men, has taken over two small stocks of intoxicating liquor and has requested this department to grant permission to sell the assigned liquor.

"Therefore, in the absence of any specific provisions of the Liquor Control Act, we would appreciate an opinion as to whether or not this association could legally offer the intoxicating liquor in question for sale and whether or not the association would be responsible for a state permit before being in a position to offer said intoxicating liquor for sale.

"Also in this same connection, could the intoxicating liquor have to be sold to a person holding a permit to sell such intoxicating liquor or could it be offered

for sale to the general public.

"This specific case is mentioned merely for outline purposes but we would be pleased to receive your opinion in order that we may be in a position to act upon similar cases which might arise in the future."

No one has the natural right to manufacture or sell intoxicating liquor. The liquor business stands on a different plane than any other occupation. The sale of intoxicating liquor is illegal unless expressly authorized by law. Many decisions of our courts announced the above principles. Nowhere, however, are the above rules more clearly or succinctly stated than in the case of *State v. Distilling Company*, 236 Mo. 219, wherein the court, at l. c. 255, stated:

"We think it is fairly deducible from the foregoing authorities, that no one has a natural or primary right to manufacture, sell or refine intoxicating liquors, in any quantity, in this State, but such occupation can only be pursued when the person who desires to engage therein first procures a license from the proper authorities of the State authorizing them to so do.

"Those authorities also establish the fact that the liquor traffic is not a lawful business, except as authorized by express legislation of the State; that no person has the natural or inherent right to engage therein; that the liquor business does not stand upon the

same plane, in the eyes of the law, with other commercial occupations. It is placed under the ban of law, and it is thereby differentiated from all other occupations, and is thereby separated or removed from the natural rights, privileges and immunities of the citizen."

The State Liquor Control Act provides a complete scheme for the regulation of the manufacture, sale, possession, transportation and distribution of intoxicating liquor. No one can sell or dispose of intoxicating liquor unless expressly authorized to do so by said act.

Section 18 of the Liquor Control Act 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."

Section 21 of said act provides, in part:

"No person, partnership, association of persons or corporation shall manufacture, distill, blend, sell or offer for sale intoxicating liquor within this state at wholesale or retail, or solicit orders for the sale of intoxicating liquor within this state without procuring a license from the Supervisor of Liquor Control authorizing them so to do. \* \* \* \* \*"

Sub-section (g) of Section 21-a1 of said Act reads as follows:

"Any person who shall sell in this state any intoxicating liquor without first having procured a license from the Supervisor of Liquor Control, authorizing him to sell such intoxicating liquor 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 (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars, or by both such fine and imprisonment."

#### CONCLUSION

In view of the above, it is the opinion of this Department that no person, partnership, association of persons, or corporation, can sell intoxicating liquor within this state without first having obtained a license from the Supervisor of Liquor Control authorizing them to do so.

It is our further opinion that any person who sells intoxicating liquor without a license is guilty of a felony.

The question of to whom a person, firm or corporation can sell intoxicating liquor depends upon the kind of license such person, firm or corporation has obtained. This, of course, is governed by the

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Liquor Control Act, with which you are familiar.

Yours very truly

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED

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J. E. TAYLOR  
(Acting) Attorney General

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