

LIQUOR CONTROL - Corporation composed of retail dealers may not act as purchasing agent or behalf of its members. Liquor traffic can only be engaged in, in the manner provided by law

November 21, 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 recent date requesting an opinion on the following question:

"May a corporation consisting of licensed retailers, purchase intoxicating liquor ordered by the said licensed retailers with money advanced to so purchase, and act as a purchasing and distributing agent for and within the scope of its employment by the licensed retailers without being required to obtain a wholesaler's or retailer's license."

As we understand it this corporation is to act only in the capacity of purchasing agent on behalf of its members. Its plan of operation is that the various members thereof make known to the corporation their needs in the way of liquors to be purchased for the member. The corporation then holds said order until sufficient other orders have accumulated so that it can purchase in large lots at a better price. All the purchases are to be made from

a duly licensed wholesaler in this state. After the purchase, the corporation will then make delivery. For this service each member who uses the corporation's facilities must pay a certain commission to it to defray operating expenses.

The question, as we see it, is: May this corporation engage in the liquor traffic in this manner, or is this type of liquor traffic authorized by the law?

In State v. Parker Distilling Company, 236 Mo. 219, 255, the court reviews a number of authorities and makes this statement:

"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."

Previous to this the Court said:

"* * * 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."

Under the law as declared in the above case it is clear that a person or corporation desiring to engage in the liquor traffic, must find its authority to do so in the law pertaining to the regulation and control of liquor.

The only kind of liquor trafficking authorized by law, is that for which a specific license has been provided.

Under the terms of Section 3, Laws of Missouri, Extra Session, 1933-34, page 79, this corporation cannot obtain a license as a wholesaler. This section reads in part: " * * * * wholesaler, * * * * their employees, officers or agents, shall not under any circumstances, directly or indirectly, have any financial interest in the retail business for the sale of intoxicating liquors, * * * ". This corporation is made up entirely of licensed retail dealers in liquor and its officers are members of this group.

However, it is not engaging in the liquor business as a wholesaler, and for this reason also cannot get a license as such. In Fishbach Brewing Company v. City of St. Louis, 95 S. W. (2d) 335, a wholesaler of intoxicating liquors is defined as "a species of merchant, a dealer, a trafficker * * * * 'one who buys in comparatively large quantities and who sells, usually in smaller quantities, but never to the ultimate consumer or an individual unit. ' "

Under this definition we see that the instant corporation lacks one of the essentials of being a wholesaler - that of selling in smaller quantities. The corporation here buys on behalf of a certain named person and makes delivery, but does not resell anything except services. Neither is said corporation a retail dealer in liquor because it does not sell anything, nor does it deal with the ultimate consumer.

It obviously is not a manufacturer.

The only type permit left, after the elimination of the above is the solicitor's permit. But a "solicitor" is one who offers to sell, or sells, some commodity. This corporation only purchases and delivers. Thus not being a solicitor, the corporation may not obtain this type of permit.

We have shown there is no type of license authorized by statute which may be granted to this corporation to engage in the liquor traffic solely as a purchasing agent. It is not a manufacturer, retailer or solicitor. Due to its peculiar organization it cannot obtain a wholesaler's permit, nor is it a wholesaler.

However, said corporation is engaged in the liquor traffic in that it accepts orders from its members, places said orders with a wholesaler and handles the delivery of intoxicating liquor.

No person having the right to engage in the liquor traffic without a license authorizing them to do so and no license being authorized by statute, it is apparent that the type of business desired to be undertaken is not authorized.

CONCLUSION

Therefore, we are of the opinion that no license is provided for a corporation composed entirely of licensed retail liquor dealers to act as purchasing agent for the members of said corpora-

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tion and that no license being provided this type
of trafficking in liquor is illegal.

Respectfully submitted

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APPROVED

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