

LIQUOR CONTROL ACT:

A householder cannot brew in his own home for home use or have in his possession by transporting in his car for his guests and himself, any intoxicating liquor, which includes home brew of alcoholic content of more than 3.2 per cent, as it violates terms of Sec. 8, Laws of 1933-34, Extra Session, p. 80.

July 28, 1938

7-29



Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

This Department is in receipt of your letter of July 27th, wherein you make the following inquiry:

. "Is it contrary to the Liquor Control Act for a householder to make home brew for his own home use and for his own personal consumption, where the alcoholic content of the home brew is more than 5% by weight?

"Is it contrary to the Liquor Control Act for a person who makes home brew of more than 5% by weight to transport this home brew in his car to the Lake for his and his guests' consumption on an outing? This home brew is not sold but given away to immediate guests."

As the same sections of law will be applicable to both questions which you present, we shall treat both collectively.

The Act of 1933-34, Extra Session, Laws of Missouri, 1933-34, pages 77 to 95, inclusive, under Section 17, page 83, defines "intoxicating liquor" as follows:

"The term 'intoxicating liquor' as used in this act, shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of three and two-tenths (3.2) per cent of alcohol by weight."

Therefore, the term "intoxicating liquor," as used throughout the Act, includes the home brew as mentioned in your letter, as the same contains 5%, or more than 3.2% as mentioned in the statute.

We think the statute which governs the situation which you present is Section 8 of the Act, page 80, which is as follows:

"No person shall possess intoxicating liquor within the State of Missouri unless the same has been acquired from some person holding a duly authorized license to sell the same under this act, or unless the said intoxicating liquor is had or kept with the written or printed permission of the Supervisor of Liquor Control, and the package in which intoxicating liquor is contained and from which it is taken for consumption has, while containing such intoxicating liquor, been labeled and sealed with the official seal prescribed under this act and the regulations made hereunder: Provided further, that nothing in this act shall be so construed as to prevent the natural fermentation of fruit juices in the home for the exclusive use of the occupants of the home and their guests."

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Conclusion.

It would therefore appear, due to the terms of Section 8, supra, that a householder or a citizen cannot brew in his own home for home use or may not have in his possession by transporting the same in his car for his guests and himself, any intoxicating liquor, which includes home brew of an alcoholic content of more than 3.2 per cent, for free use and consumption, as it violates the terms of Section 8; the only exception being when written or printed permission is granted by the Supervisor of Liquor Control or that the beverage be the natural fermentation of fruit juices in the home for the exclusive use of the occupants and their guests.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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J. W. BUFFINGTON  
(Acting) Attorney-General

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