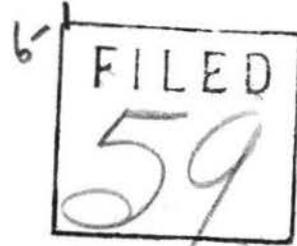


LIQUOR CONTROL: Intoxicating beer must be inspected and the inspection fee paid while the beer is in hands of brewer. If distributor desires to bottle bulk shipment of beer, he must procure proper label and affix on said bottles or containers.

May 23, 1938



Col. E.J. McMahon
Supervisor of Liquor Control
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your letter of May 7, 1938, in which you submit the following:

"Brewers operating under a 5% beer solicitors permit are shipping beer in bulk to distributors located with this State, said distributors in turn bottling the beer in 32 and 64 oz. bottles. The beer shipped in bulk is tax paid at the Brewery at the rate of 62¢ per barrel and as a result the distributors have not been affixing the case stamp basing their refusal to do so on the theory of double taxation; therefore, * * * * *

Upon these facts, you present this question: May brewers ship beer in bulk, without the bulk shipment bearing the inspection label, to distributors located in this state, who in turn, bottle the bulk shipment and affix the inspection label on the bottles or containers?

Section 34, Extra Session Laws, 1933-34, page 89, provides in part that "It shall be the duty of the Supervisor

of Liquor Control to cause to be inspected all beer, as herein defined, or other intoxicating malt liquors, brewed, manufactured or sold in this state, and * * * * to place upon the package containing such beer or intoxicating malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients".

Section 37, Laws of 1935, page 282, provides that the Supervisor shall be paid "for the inspecting and gauging of all malt liquors containing alcohol in excess of three and two tenths (3.2%) per cent by weight, * * * * the sum of sixty-two (62¢) cents per barrel".

It will be noticed that these sections pertaining to the labeling, inspection and gauging of intoxicating malt liquors, do not state in whose hands said beer is to be inspected, that is, the brewer or the distributor.

Even though the above sections do not expressly provide the time and place for the inspection of, and the payment of inspection fees on intoxicating malt liquors, it is clear that Sections 34 and 37, supra, contemplate that the fees are to be paid at the time and place the inspection and labeling takes place.

In whose hands should intoxicating liquors be inspected? The answer to this must be gleaned from other provisions of the act since there is no express provision concerning this.

Section 17, Extra Session Laws, 1933-34, provides that:

"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."

This definition includes intoxicating malt liquors.

Section 41a, Extra Session Laws, 1933-34, page 91, provides that:

"Any person who shall haul or transport intoxicating liquor, whether by boat, airplane, automobile, truck, wagon or other conveyance, in or into this state, for sale, or storage and sale in this state, upon which the required inspection, labeling or gauging fee or license has not been paid, shall upon conviction thereof, be deemed guilty of a misdemeanor."

In view of this section, how can the distributor obtain beer in bulk that has not been inspected, gauged, and labeled? No transporter can or will transport said beer from the brewer to the distributor. The only result which can follow in applying the provisions of Section 41a, supra, is that intoxicating malt liquor must be inspected in the hands of the brewer. And this is entirely proper because the inspection is for the purpose of seeing that said beer is made of the proper ingredients and under sanitary conditions in the brewery. Section 31, Extra Session Laws, 1933-34, page 89. The inspection fee must be paid at the time and place said beer is gauged and labeled, and that is in the hands of the brewer.

Assuming that a distributor has purchased beer in bulk from a brewer, bottled the same and now desires to place it on the market, will said distributor have to purchase labels to place on said bottles or containers?

Section 39, Extra Session Laws, 1933-34, page 90, provides:

"Any person who shall sell any intoxicating liquors, as herein defined, within this statute, which * * * (are) * * * contained in packages which shall not have upon them the certificate and label of the Supervisor of Liquor Control * * * shall be deemed guilty of a misdemeanor."

The law even goes further and not only makes the sale of non-labeled intoxicating malt liquors a crime, but by Section 8, Laws of 1937, page 528, provides that:

"No person shall possess intoxicating liquor within the State of Missouri unless the package in which such

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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; * * *."

Thus, we see that in this state, no person may transport, sell or possess non-labeled and uninspected intoxicating malt liquor. If the distributor chooses to buy beer in bulk, upon which the inspection fee has been paid - and this is the only way he can buy it - and bottle same, he must procure labels for said bottles or containers, place said labels on said bottles or containers while he has said beer bottled and in his possession, and before he offers the same for sale.

It has been advanced that this will subject said beer to double taxation, which is not favored or permitted. State ex rel. v. Louisiana and Missouri R.R. Co., 215 Mo. 479. Concerning this, it is apparent that the distributor, by his own conduct (bottling the bulk shipment), has placed himself in the position of having to pay another inspection fee. The law provides a course, if followed, whereby the distributor will not be compelled to pay said inspection fee. This course being to handle and place said beer on the market in the original container in which it was placed by the brewer. Under these circumstances, we do not think the distributor is in a position to register a valid complaint upon being compelled to pay another inspection fee on a bulk shipment of beer which he has bottled.

CONCLUSION

Therefore, it is the opinion of this department that intoxicating malt liquor must be inspected, labeled and the inspection fee paid while said beer is in the hands of the brewer. That a distributor, if he purchases said beer in bulk from the brewer, upon which the inspection fee has been paid, and bottles the same, must procure and place upon said bottles or containers the proper inspection labels in order to possess and offer the beer for sale.

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

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