

LIQUOR CONTROL: Supervisor does not have the power, when license is revoked, to refuse to issue to another person a license covering the same premises.

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10/15  
October 13, 1938



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

Dear Sir:

This will acknowledge receipt of your letter of September 23, 1938, in which you request our opinion on the following question:

Does the Supervisor of Liquor Control have the authority, when a license is revoked, to refuse to issue another license covering the same premises covered by the revoked license?

If the Supervisor has this power, it must be found in the law which creates his office and prescribes his duties, either expressly or by necessary implication.

Section 27, Laws, 1937, page 533, prescribes the qualifications a licensee must have, as follows:

"No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village; and no person shall be granted a license or permit hereunder whose

license as such dealer has been re-  
voked, \* \* \* \* \*  
or who employs in his business as  
such dealer, any person whose license  
has been revoked \* \* \* \* \*

Section 13-a, Laws of Missouri, 1933-34, Extra  
Session, page 82, pertains to the qualification of persons  
desiring to sell intoxicating liquor by the drink, and is  
as follows:

"Any person who possesses the qualifi-  
cations required by this act, and who  
meets the requirements of and complies  
with the provisions of this act, and  
the ordinances, rules and regulations  
of the incorporated city in which such  
licensee proposes to operate his busi-  
ness, may apply for and the Supervisor  
of Liquor Control may issue a license  
to sell intoxicating liquor, as in  
this act defined, by the drink at  
retail for consumption on the premises  
described in the application. \* \* \* \*"

Section 16, Laws of Missouri, 1933-34, Extra  
Session, page 83, provides as follows:

"No license issued under this act  
shall be transferable or assignable."

Thus, it is clear upon reading the above sections  
together, that a license to sell intoxicating liquors is  
something which is a personal right of the holder. The  
qualifications and disqualifications prescribed all per-  
tain to the person and not to a particularly described  
premise. This is further borne out by what is said in  
State v. Parker Distilling Company, 236 Mo. 1.c. 253,  
and the definition of "liquor license" as contained in  
33 Corpus Juris, page 529, section 82.

In the Parker Distilling Company case it is said:

"Since the decision in Austin v. State,  
10 Mo. 591, it has been the established

law of this state that the right to sell spirituous or intoxicating liquors is not a natural right, but is a calling which no one has the right to pursue, without first having received the privilege or a license so to do, from the lawful authorities of the State."

In Corpus Juris, supra, it is stated:

"A liquor license is a formal grant of permission or authority from the government or a state or municipality acting through its appointed agents to a selected individual to engage in the sale \* \* \* of intoxicating liquors."

The right to close or bar a particular premise from being used for the sale of intoxicating liquor has been jealously guarded by the Legislature. By Section 44-a-10, Laws, 1935, page 283, it is provided that courts having equity jurisdiction have the authority through injunction to close a particular premise used for the sale of intoxicating liquor if its use is such as to constitute it a nuisance as defined by the liquor act. The vesting of this power in the equity courts of this state brings into play the doctrine of "Expressio unius est exclusio alterius," that is to say, where the statute vests authority in a certain body it necessarily includes a negative that no other body shall exercise said authority. Kroger Grocery and Baking Company vs. City of St. Louis, 106 S. W. (2d) 435 (Mo.).

A liquor license is a thing personal to the holder thereof. The Supervisor has the duty to see that the applicant for a license is qualified and that the premises described is constructed in the manner required. He is not enjoined with the duty of ascertaining the moral character of the premises (if such inanimate objects can be said to possess morals). The authority to close by injunction premises operated in such a manner as to constitute a nuisance is vested in the courts of this state having equity jurisdiction and this excludes the Supervisor for exercising such power.

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We do not mean to convey the impression, however, that we are holding the Supervisor is without authority to refuse a permit when it appears that the subsequent application by another person is merely a blind in order to permit the revoked licensee to continue his business under the name of another. This would be doing indirectly what is prohibited being done directly and cannot be permitted. State ex rel. v. Gorden, 236 Mo. l.c. 167. Also, we might call attention to the fact that Section 27, supra, prohibits a licensee from employing in his business a person whose license has been revoked.

## CONCLUSION

Therefore, it is the opinion of this department that the Supervisor of Liquor Control does not have the authority to refuse to issue a license when the premises described in the application is the same upon which a previous license has been revoked.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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