

**INTOXICATING LIQUOR:**

Conviction for violation of laws other than liquor laws does not result in automatic revocation of liquor license.

December 31, 1938



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

Dear Sir:

We have received your request for an opinion, which reads as follows:

"I invite your attention to Section 30, Intoxicating Liquor Laws of the State of Missouri, paragraph headed 'Violation a misdemeanor.'

"I request an opinion in the cases quoted below as to whether the acts charged and proven against certain licensees of this Department constitute a violation of the Liquor Laws and whether this Department must automatically revoke these licenses as provided in Section 30. I cite two specific cases:

"JOHN F. RYAN and ROBERT RILEY, 7014 Clayton Road, Richmond Heights, Missouri, cited before the Supervisor for hearing on November 9, 1938. One charge being that they did not at all times keep an orderly house, violation of Section 26 of the Liquor Control Act of the State of Missouri, (this being a gambling charge covering the operation of a 5¢ slot machine).

"At this hearing the Supervisor found the evidence substantiated the citation, and gave Ryan and Riley an 8-day suspension, November

13th to 20th, inclusive. Transcript of the testimony was then sent to the Prosecuting Attorney of St. Louis County and later Ryan and Riley were tried on the charge of 'Betting on Games,' before George J. Siek, Justice of the Peace of Carondelet Township, who found the defendants guilty and fined them \$10.00 and costs of \$19.20.

"JAMES J. DEVINE, Highway #66, Alleton, Missouri, was similarly cited for hearing before the Supervisor on charges including a similar citation, 'not keeping an orderly house' in that he operated a slot machine, and his license was suspended for fifteen days, November 13th to 27th, inclusive. Transcript of the testimony was also sent to the Prosecuting Attorney of St. Louis County, and likewise, Devine was tried before George J. Siek, Justice of the Peace of Carondelet Township, charged with 'Betting on Games,' was found guilty and fined \$10.00 and costs of \$18.80.

"I am attaching herewith the Transcript of Criminal Procedure, signed by George J. Siek, Justice of the Peace of Carondelet Township in the trial of both Ryan and Riley and the trial of James J. Devine.

"There are several other licensees in St. Louis County who have been heard before this Department on similar charges and transcript of testimony has been forwarded to the Prosecuting Attorney of St. Louis County, but up to the present we have not been advised of any subsequent action.

"I desire to be advised if convictions under the charges noted on the attached transcripts do constitute a violation of 'any of the provisions of this act,' this being the language of Section 30."

Section 30 of the Liquor Laws, Laws of Missouri, Extra Session, 1933-1934, page 88, reads in part as follows:

"Conviction in any court of any violation of this act shall have the effect of automatically revoking the license of the person convicted, \* \* \*."

The question then is whether or not a conviction in a court on a charge of operating a slot machine or of gambling has the effect of automatically revoking the liquor license of any person so convicted. It will be noted that the convictions referred to in Section 30 refer solely to violations of "this act." We think it is clear that the term "this act" refers only to the provisions of the liquor laws and of convictions as a result of the violation of the specific terms thereof.

In this connection it is sufficient to say that gambling and the operation of slot machines is not prohibited or designated as a crime by any of the terms of the Liquor Act. Neither does the Liquor Act provide any penalty as the result of a conviction for operating a slot machine or gambling, such as a penitentiary or jail sentence or a fine. Such laws and penalties are contained in Chapter 30 of the Revised Statutes of Missouri, 1929, dealing with crimes and punishments, and not in the Liquor Act. Consequently a person so convicted would not be convicted "of any violation of this act," and consequently the liquor license would not be automatically revoked.

A contrary interpretation would lead to absurd results and would include all the duties and restrictions imposed upon the entire citizenry of this state by all the laws in the State of Missouri. For example, laws prohibit persons from speeding in certain incorporated areas. Other laws prohibit persons from spitting on the streets. Can it be said that a conviction for the violation of either of these laws would have the effect of "automatically revoking the license of the person convicted"? We do not think so. The Legislature, in our opinion, did not intend that any and all convictions should have that effect. Therefore, the language in Section 30 can refer only to convictions for violations of the terms of the Liquor Act itself.

Section 26 of the Liquor Laws, Laws of Missouri, 1937, page 531, does provide that the Supervisor of Liquor Control shall revoke or suspend liquor licenses if any licensee "has not at all times kept an orderly place or house." This statute provides further, however, that the Supervisor of Liquor Control must give the licensee ten days' notice in writing of such application to suspend or revoke, with full right to have counsel and produce witnesses and be heard before any such action can be taken. There is no doubt that any liquor licensee who permits gambling and slot machines in his place of business is not keeping "an orderly place or house," yet this statute does specifically provide that notice must be given and a full hearing accorded the dealer before the license can be suspended or revoked. In other words, any such revocation or suspension can not be and is not "automatic." Any action taken after any such hearing is discretionary with the Supervisor. He may revoke or suspend the license or dismiss the charges. Further more, the Supervisor can act under Section 26 whether there has been a prior conviction in any court or not. Consequently, Section 26 plays no part whatsoever and its terms need not be followed by the Supervisor of Liquor Control if a licensee is convicted in any court of violating any of the terms and conditions of the Liquor Act. In that event, the revocation of the license is immediate and automatic. However, if there has been no prior conviction of any violation of the liquor laws, or if there has only been a prior conviction of the violation of laws of the State of Missouri other than the liquor laws, then there is no automatic revocation and the Supervisor must give due and proper notice in writing of the charges and allow the licensee a full hearing before taking any action in either revoking or suspending the license.

#### CONCLUSION

Our conclusion is that if any liquor licensee is convicted in any court of violating any of the terms of the Liquor Act, the liquor license is automatically and immediately

Hon. E. J. McMahon

-5-

Dec. 31, 1938

revoked. However, a conviction of a violation of any other laws of the State of Missouri not contained in the Liquor Act itself does not have the effect "automatically" of revoking a liquor license, although the evidence and facts causing such conviction may be sufficient to authorize the Supervisor of Liquor Control to revoke or suspend the license after giving due notice in writing and according the licensee a full hearing.

Respectfully submitted

J. F. ALLEBACH  
Assistant Attorney General

APPROVE:

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J. E. TAYLOR  
(acting) Attorney General