

INTOXICATING LIQUOR: Unlawful to supply habitual drunkard with intoxicating liquor.

August 26, 1938

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Honorable W. S. Pelts
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Sir:

We have your request of August 24, 1938, for an opinion upon the following statement of facts:

"A man was charged with and plead guilty to the offense of being intoxicated and disturbing the peace of the community and was sentenced to serve six months in the county jail. While serving this sentence a man gave him a pint of whiskey.

"Did the man who gave him the whiskey while he was confined violate the law? If so, under what section?"

Section 9 of the Liquor Control Act (Laws of Missouri, Extra Session, 1933-1934, page 81) prohibits any person from selling or supplying intoxicating liquor to an habitual drunkard or to any person who is under or apparently under the influence of intoxicating liquor.

The term "habitual drunkard" has been defined in Glenn vs. Glenn, 87 Mo. App. 377, as a person who habitually drinks strong drinks immoderately, one whose habit is to get drunk.

It may be that Section 9 of the Liquor Control Act has been violated if you can establish that the person to whom the liquor was supplied was an habitual drunkard.

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Section 8447, R. S. Mo. 1929 makes it a misdemeanor to furnish intoxicating liquor to any person confined in the State Penitentiary or in a prison or reformatory or industrial home, or that may be under sentence to such institution, and be employed by the state at any kind of labor either within or without the walls or enclosure of any prison, reformatory, or industrial home, or state farm.

The above statute applies among other things to any person confined in the State Penitentiary. Section 3914, R. S. Mo. 1929 carries a penalty for any person who shall escape while confined in the Penitentiary. In State vs. Betterton, 295 S. W. 545, 317 Mo. 307, an effort was made to construe this confinement in the Penitentiary so as to include a convict detained on a prison farm. It was held that the term "confined" meant being kept inside the penitentiary walls. In view of the fact that this section is part of Article 5, Chapter 44 relating to penal institution, it cannot be extended to apply to county jails.

It is, therefore, the opinion of this office that the provisions of the Liquor Control Act and Section 8447, R. S. Mo. 1929, do not prohibit the giving of liquor to prisoners in the county jail.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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