

LIQUOR CONTROL: Brewing corporation may have interest in wholesale business. Neither is brewing corporation liable for violations committed by wholesale corporation.

March 28, 1939

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Mr. Wallace I. Bowers, Chief Clerk
Department of Liquor Control
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of March 16, 1939, presenting the following questions for an opinion:

"(1) Under the Liquor Control Act and Non-intoxicating liquor laws, may a Brewery have a controlling interest in a corporation licensed to sell 5% and 3.2% beer at wholesale?

"(2) Assuming that such a practice is legal, what would be the Brewery's liability in case of a violation of the Liquor Control Act or Non-intoxicating liquor law on the part of the Wholesale corporation?"

I.

Section 3, Laws of 1933-34, Extra Session, page 79, pertaining to intoxicating liquors, provides:

"Distillers, wholesalers, winemakers, brewers or their employees, officers or agents, shall not, under any circumstances, directly, or indirectly, have any financial interest in the retail business for sale of intoxicating liquors * * * *."

Section 13139-z-14, Laws of 1935, page 399, provides:

"Neither brewers nor manufacturers of non-intoxicating beer, or their employees, officers, agents, subsidiaries or affiliates shall, under any circumstances, directly or indirectly, have any financial interest in the retail business for the sale of such non-intoxicating beer, * * * *."

These two statutes answer your first question. It will be noted that they only prohibit the brewer from having a financial interest in the "retail business". There is no statutory provision, of which we are aware, preventing a brewer from having a financial interest in the wholesale end of selling intoxicants.

II.

In *Forest City Mfg. Co. v. International L.G.W. Union*, 111 S.W. (2nd) 1.c. 940 (Mo. App.), it is said, "A corporation is a creature of the sovereign power which brings it into being, with an entity separate and distinct from the individuals who compose it, * * *". In *Knott v. Fisher Vehicle Woodstock & Lbr. Co.*, 190 S.W. 1.c. 379 (Mo. App.), the court said, concerning the identity of two corporations, "Even if there was identity of stockholders, the corporations would be distinct".

In 14 C.J., Section 19, page 58, appears this statement:

"Since a corporation is a person distinct from its members or stockholders, it follows that, even though the same individuals may be the incorporators of, or own stock in, two separate corporations, and even though such corporations may have the same individuals as officers, there is no identity between the two corporations, and neither is liable for the acts or faults of the other merely because of the identity of the

members or stockholders and officers. A holding corporation has a separate corporate existence, and is to be treated as a separate entity, unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth."

This statement from the text is amply supported by citations of authority from jurisdictions other than Missouri.

CONCLUSION.

Therefore, it is our opinion that a brewing corporation may own stock in a wholesale corporation dealing in intoxicating and non-intoxicating beer. It is further our opinion that a violation of law by the wholesale corporation in no way could subject to penalties the brewing corporation owning stock therein because they are separate entities, absent a showing that the wholesale corporation was set up by the brewing corporation as a sham through which the brewing corporation seeks to violate the law with impunity.

Respectfully submitted,

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APPROVED By:

W. J. BURKE
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