

LIQUOR: Possession only of illegal intoxicating liquors constitutes a misdemeanor.

September 27, 1939

Hon. Frank Huffhines
Prosecuting Attorney
Stone County
Galena, Missouri



Dear Sir:

We have received your letter of September 2 which reads as follows:

"Please furnish me with an opinion as to the most severe penalty for possession of illegal whiskey. The whiskey has been confiscated (sixteen pints) and all of said corn whiskey had been put in legal abandoned bottles."

The only section of the Intoxicating Liquor Laws dealing directly with penalties prescribed for possession and possession only of illegal intoxicating liquors is contained in Section 8 of the Liquor Laws, Laws of Missouri, 1937, page 528. This section reads as follows:

"No person shall possess intoxicating liquor within the State of Missouri unless the package in which such 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; provided further, that nothing in this act shall be so construed as to prevent the natural fermentation of fruit juices in the home for the exclusive use of the occupants of the home and their guests."

The foregoing section states that no person shall possess intoxicating liquor unless the package in which it is contained has been labeled and sealed as prescribed by law. Since no penalty is prescribed in Section 8, supra, Section 43, Laws of Missouri, 1935, page 282, becomes effective. Section 43 reads as follows:

"Any person violating any of the provisions of this Act, except where some penalty is otherwise provided, shall upon conviction thereof be adjudged guilty of a misdemeanor and punished by a fine of not less than Fifty (\$50.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and jail sentence."

Therefore, as to the possession of illegal intoxicating liquor, it appears that this is a misdemeanor only and that a fine of One Thousand Dollars (\$1,000.00) and imprisonment in the county jail for one year is the maximum which can be assessed.

Since you do not give us any of the details of the case you have in mind, and since it is possible that other laws might have been violated in connection with an illegal sale or the stamp laws, we are taking the liberty of quoting other sections which might possibly be applicable.

Section 21a1 of the Liquor Laws, Laws of Missouri, 1937, page 531, reads in part as follows:

"(d) Any person who sells to any person within this state any intoxicating liquors mentioned in subsection (a) of this section, unless the same be contained in a container stamped or labeled as provided in this act, shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a term of not less than two years nor

more than five years, or by imprisonment in the county jail for a term of not less than one month nor more than one year, or by a fine of not less than fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment.

* * * * *

"(g) Any person who shall sell in this state any intoxicating liquor without first having procured a license from the Supervisor of Liquor Control, authorizing him to sell such intoxicating liquor shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than two years nor more than five years, or by imprisonment in the county jail, for a term of not less than three months nor more than one year, or by a fine of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars, or by both such fine and imprisonment."

Therefore, if a person sells unstamped liquor, the crime is a felony. If a person sells intoxicating liquor without being licensed to do so by the Supervisor of Liquor Control, this likewise constitutes a felony.

Section 30a, Laws of Missouri, 1935, page 277, reads as follows:

"It shall be unlawful for any person to open, or to remove therefrom the contents of, any bottle or other container containing intoxicating liquor without first destroying the state stamp on such container. Provided, that it shall not be unlawful for any duly licensed brewer or manufacturer of malt liquor to refill with malt liquor any such container originally containing malt liquor. Whosoever shall violate any provisions of this section with intent to defraud the

state of its revenue shall be deemed to be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a term of not less than two years nor more than five years, or by imprisonment in the county jail for a term of not less than one month nor more than one year, or by a fine of not less than fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment."

Consequently, if the person should have attempted to use state stamps on a container which had been previously filled with legal liquor and properly stamped, that is, if an attempt is made to re-use stamps, then the crime is likewise a felony.

Section 36 of the Liquor Laws, Laws of Missouri, Extra Session 1933-34, page 90, has to do with the manufacture or use of labels by unauthorized persons and provides that the same shall constitute a felony. Section 36 reads as follows:

"It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, to attempt to use or use, any of the certificates or labels, or both, provided for by this act, or limitations thereof, or have in his possession any counterfeit plates capable of being used to make the same, except such persons as by law are allowed to make, sell and use the same; and any person so offending shall be deemed guilty of a felony and upon conviction be punished by imprisonment in the penitentiary for a term not to exceed five years."

It may be that none of the above sections except Section 8 will be of any benefit to you, but since

Hon. Frank Huffhines

- 5 -

September 27, 1939

you included a few facts in your letter, we thought that some of the laws quoted above might have been violated.

CONCLUSION.

In answer to the specific question which you ask, that is, the most severe penalty for possession of illegal whiskey, we wish to say that the possession only of such whiskey constitutes a misdemeanor. The severest penalty that can be given, therefore, is a One Thousand Dollar (\$1,000.00) fine, together with imprisonment in the county jail for a term of one year.

Respectfully submitted,

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APPROVED By:

W.J. BURKE
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JFA:VAC