

INTOXICATING LIQUOR:
CORPORATIONS CRIMINALLY
LIABLE FOR VIOLATIONS OF
LIQUOR CONTROL ACT:

Officers, agents, servants and
employes participating in violations
also criminally liable.

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July 24, 1939



Honorable Walker Pierce, Supervisor
Department of Liquor Control
Jefferson City, Missouri

Dear Sir:

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

"I am in receipt of a letter addressed to me by the Honorable Latney Barnes, Prosecuting Attorney of Audrain County, pertinent parts of which are as follows:

"On Wednesday night April 19, 1939, Mr. D. E. Woodworth, local manager of the Ruskin Mercantile Company, sold six bottles of beer to R. T. Kannen, Vice-President of the Springfield Brewing Company. On the same night Mr. Woodworth sold a full case containing 24 bottles of beer to Garnett C. Skinner, President and Treasurer of the Springfield Brewing Company. In both cases the beer sold bore labels "Stadt Brand Lager Beer" of the Springfield Brewing Company, Springfield, Illinois. The bottles were capped with caps marked "B", which I am informed indicates its origin as the Blumer Brewing Company of Wisconsin, and contained beer brewed by the Blumer Brewing Company.

"At the time of the sale of the whole case the bottles were taken from a

Blumer case and placed in a Stadt case. Both of the above sales took place in the Ruskin Mercantile Company liquor Store, Mexico, Audrain County, Missouri.

"The Secretary of State informs me that the Ruskin Mercantile Company was incorporated May 7, 1935, and that their records show Harry Ruskin as President, Sam Woll as Secretary and Treasurer, who with Ray Ruskin are the directors of the corporation, whose address is 3135 Troost Ave., Kansas City, Missouri.

"Inasmuch as 30-b of the Intoxicating Liquor Laws of the State of Missouri, Laws of Missouri, 1935 (P.278) states: "Misrepresentation - No person holding a license or permit shall sell malt liquor, or any other intoxicating liquor in this state or shall offer for sale any such malt liquor, or other intoxicating liquor, whatsoever, brewed, manufactured, or distilled by one manufacturer in substitution for, or with the representation that any such malt liquor or other intoxicating liquor is the product of any other brewer, manufacturer, or distiller. Whosoever shall violate the provisions of this section shall be deemed guilty of a misdemeanor."

"Inasmuch as Mr. Woodworth does not have a liquor license or permit would a prosecution under Section 30-b lie against him?

"Also can the Ruskin Mercantile Company be charged with the crime, and if so on whom would the warrant be executed?

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"We desire to file a criminal charge in addition to requesting your department to revoke the license of the Ruskin Mercantile Company."

"Inasmuch as Mr. Barnes desires to file criminal charges I will appreciate it very much if you will address to me or to him an opinion covering the questions presented in his letter.

"The question as to who should be prosecuted for a violation of a criminal law where the permit holder was a corporation has frequently been presented to me. An opinion from your office on this subject will therefore be of considerable help."

The courts have often held that corporations as such can be charged and convicted of a crime. The question is quite thoroughly discussed in Fletcher Cyclopedia Corporations, Permanent Edition, Volume 10, Section 4942. This section reads as follows: (page 643)

"While it was thought anciently, principally, perhaps, on the authority of a statement attributed to Lord Holt, that a corporation, as an entity, was not indictable under the common law, though its members were, there probably never was a time when a corporation was indictable in no case and under no circumstances. This doctrine of non-liability for crime arose from the theory that a corporation, being an intangible entity, could neither commit a crime nor be subjected to punishment, because any illegal act of a corporate agent was done without authority of the corporation and ultra vires.

"While the criminal law cannot be

extended to corporations in the same manner or as fully as to natural persons, it is held today, almost universally, that a corporation may be liable criminally for crimes which its agents are capable of committing on its behalf, but the authorities are not so uniform as to whether a corporation is capable of manifesting a specific criminal intent, or of committing crimes involving personal violence. And there are some cases which, apparently, still hold to the ancient rule.

"Both domestic and foreign corporations doing business in the state are subject to criminal liability.

"It is immaterial that the corporate officers and agents are themselves severally liable to indictment for the crime with which the corporation is charged. * * * * *

The type of crimes a corporation can be convicted of is discussed by Fletcher in Volume 10 of the same works, Section 4951, pages 670-674:

"The application of the principles on which are based the views as to a corporation's liability to, or immunity from, criminal prosecution may be further illustrated by concrete examples. Thus it has been held that a corporation is liable to criminal prosecution for violation of a law regulating sales of intoxicating liquors; for permitting gaming on its fair grounds; for a violation of the federal statute which prohibits the depositing of obscene matter in the mail; for

keeping a disorderly house; for violating, in its capacity of federal contractor, the federal eight-hour labor law; for a violation of the Sabbath labor law; for violation of corrupt practices acts; for a violation of the usury laws of the state in which it is located; for issuing unstamped papers with intent to evade the revenue law; for a violation of the laws relative to the procuring of a license to do business; for failure to pay a license tax under an ordinance; for the giving of rebates; for offenses under the Bankruptcy Act; for practicing law; for taking more natural gas from a well than the maximum allowed; for obtaining from a carrier, by fraud and deception, the possession of property moving in interstate commerce; for violation of laws regulating the sale of agricultural seeds; for conspiracy, and hence may be counted in computing the number necessary to the commission of such crime. It has been held also that a corporation is liable criminally for violation of the Espionage Act, and under a statute prohibiting any person from advocating violence to gain political ends. Cutting down timber and thereby obstructing a river, in violation of a statute, is a crime for which an indictment will lie against a corporation. A corporation created for the purpose of constructing and maintaining a toll bridge, and required by its charter to keep the same at all times in good, safe and passable repair, may be indicted for failure to light the same at night when necessary for the safety and convenience of the public. And a railroad company may be indicted for disobeying

an order by the proper authorities to construct arches or bridges to connect lands severed by the construction of its road, as required by its charter or by statute; but a railroad is not indictable under a statute forbidding obstruction of crossings where the approaches to the crossing are merely in a condition of disrepair; and it has been held that a statute holding employees in charge of a train to be guilty of a misdemeanor for wilfully obstructing a crossing longer than a certain period does not subject the railroad corporation to criminal liability. When the legislature has provided that the doing of an act prohibited by statute, no penalty for the violation of the statute being imposed, shall be a misdemeanor, a turnpike company, the special charter of which provides that its gates shall not be nearer together than five miles, may be indicted for collecting toll at two of its gates which were not such distance apart. * * * * *

In the case of Southern Express Co. v. State, 58 S. E. 67 (Court of Appeals of Ga.), a corporation was convicted of furnishing liquor to a minor through an agent. The court approved the following charge to the jury: (l. c. 70)

"* * * * nor did the judge err in charging the jury in his recharge, as follows: 'It is the duty of the express company to ship liquor or anything else delivered to it to the point of destination. It is not the duty of the company to deliver liquor to minors. If the company does it through its agent, employes, or any person that they have in their employ

about the building to deliver packages, if it is done by the agent or any person acting under the agent, by his direction or with his consent, delivering packages generally, if in doing that they deliver liquor to minors, then that is a violation of the law.'

In the case of Stewart v. Waterloo Turn Verein, 32 N. W. 275, l. c. 276, the questions certified to the Supreme Court of Iowa for decision and the decision of the court is in the following language:

"(1) Whether the sale of beer by the members of said committee, at the entertainment aforesaid, to a person in the habit of becoming intoxicated, subjects the defendant to the penalty provided in section 1539 of the Code. (2) Is the defendant corporation a person within the meaning of said section 1539?"

"***** It is provided by subdivision 13 of section 45 of the Code that 'the word "person" may be extended to bodies corporate.' This is laid down as a rule to be observed in the construction of the statutes of this state. It is apparent, however, that this rule cannot be of universal application, especially in the construction of criminal statutes, for the reason that there are some crimes for which a corporation cannot be punished. For example, if all the members of a corporation should be guilty of a criminal homicide in pursuance of a resolution of the

corporation, the corporation would not be liable to indictment for the murder. The true rule is that corporations are to be considered as persons when the circumstances in which they are placed are identical with those of natural persons expressly included in a statute." *Wales v. City of Muscatine*, 4 Iowa, 302; *South Carolina R. Co. v. McDonald*, 5 Ga. 531.

"Applying this rule to the case at bar, it is clear that a corporation is a person within the meaning of section 1539 of the Code. There is nothing therein which may not be applied as well to a corporation as to a natural person, and there is no more reason for claiming that a private corporation is not included within its provisions than there is in holding that such a corporation is a person within the meaning of the law authorizing attachment by garnishment, or any other provision of the statute equally applicable to natural and artificial persons.

"* * * * *
It was not necessary to prove that the beer was ordered and sold by an order of the defendant made in its corporate capacity. When a railroad company is indicted for a nuisance in obstructing a public highway in this state, (a prosecution which is of frequent occurrence,) it has never been thought necessary to prove that the obstruction was placed in the highway in pursuance of some resolution of the board of directors of the corporation. The corporation is liable for the acts of its agents and employes in such cases.

"In regard to the liability of private corporations for violations of criminal laws, Mr. Morawetz, in his work on Private Corporations, employs this language, (volume 2, sections 732, 733): 'It follows, therefore, that a corporation cannot be charged criminally with a crime involving malice, or the intention of the offense. Even though the corporators themselves should unanimously join, with malice aforethought, in committing a crime as a corporate act, yet the malice would be that of the several members of the company, and not actually one malicious intention of the whole company. There are, however, certain classes of crimes which do not depend upon the intention of the offender, and are not distinguishable from simple torts, except by the fact that in the one case an individual sues for damages on account of a private tort, and in the other case the state sues for a penalty on account of a public wrong. In these cases the crime consists of the act alone, without regard to the intention with which it was committed; and there is no difficulty in attributing an offense of this character to a corporation, since it may be committed entirely through the company's agents. Accordingly it has been held that a corporation may be indicted for causing a public nuisance, for not performing a duty cast upon it by law, or for doing any act which is made indictable, without regard to the intention of the offender.' The author cites many authorities in support of the text, and it appears to us the principles therein laid down are so plainly correct as to command the approval of every legal

mind.

"Applying these principles to the case at bar, and the conclusion is inevitable that the defendant is liable. The persons who sold the beer, and the officers and members of the corporation who stood by and acquiesced in the sales, were not actuated by malice. They doubtless believed that the beer gave zest to the ball, and added to the enjoyment of the entertainment. They had 'malice towards none, but charity for all,' and thought it no crime to dispense to the festive throng that which they believed to be exhilarating but not intoxicating.

"We think both of the questions certified should be answered in the affirmative."

In the case of State v. Delaware Saengerbund, 91 Atl. 290, (Court of General Sessions of Del.), a corporation was convicted of selling liquor without a license. As to the corporation the court said at l. c. 292:

"It is not denied that the defendant corporation is a 'person' within the meaning of the statute. The word person is a generic term, and as such may extend to and include artificial as well as natural persons. The intention of the Legislature in the use of the word is manifest, and in construing the statute, we hold that when the Legislature by statute attempted to regulate the sale of liquor in all ways it intended its control to extend to all persons, and this embraced corporations as well as individuals. Rev.

Code, c. 5, section 1, subd. 10;
 Germania v. State, 7 Md. 1; United
 States v. Amedy, 11 Wheat. 592, 6
 L. Ed. 502; People v. Ins. Co., 15
 Johns. (N. Y.) 358, 8 Am. Dec. 243.
 * * * * *

The Legislature has said in the Liquor Control Act that the term "person" shall include corporations. Section 43a of the Act, Laws of Missouri, Extra Session 1933-34, page 91, defines the word "person" as follows:

"The term 'person' as used in this act shall mean and include any individual, association, joint stock company, syndicate, co-partnership, corporation, receiver, trustee, conservator, or other officer appointed by any State or Federal Court."

In the case of State v. Worker's Socialist Pub. Co., 185 N. W. 931, the Supreme Court of Minnesota held that where a corporation was criminally liable under a statute prohibiting "any person" from advocating violence to gain political ends, the corporation could be convicted under a statute which expressly provided that the word "person" includes a corporation. The court said:

"* * * * * The statutes of this state expressly provide that in the construction of penal statutes the word 'person' includes a corporation save when otherwise plainly declared or clearly apparent from the context.
 * * * * *

The Supreme Court of Missouri in the case of The State ex rel. v. The St. Louis Club, 125 Mo. 308, held that an incorporated club is not a person within the meaning of the dramshop regulating the sale of intoxicating liquors and requiring a person to take out a license as a dramshop keeper. In this particular connection the court said at l. c. 317-318:

"* * * * * The definition of a dramshop keeper and the provision against the sale of liquors without license have remained practically the same since 1841. Acts, 1840-1, p. 82; R. S. 1845, p. 542; R. S. 1889, sec. 4569; Laws of Missouri, 1891, p. 128.

"A dramshop keeper is a person permitted by law, being licensed according to the provisions of this chapter, to sell intoxicating liquors in any quantity, either at retail or in the original package, not exceeding ten gallons." Laws, 1891, p. 128, sec. 1.

"The 'person' obtaining the license must satisfy the court that he is a law-abiding, assessed, taxpaying male citizen above twenty-one years of age.

"We think it is obvious that the legislature never intended that a corporation should be licensed under this act as a dramshop keeper. 'Person' as used in this act does not include a corporation, because the whole context is repugnant to such a construction. R. S. 1889, sec. 6569. The criminal provisions of the statute also evidently point to a 'person,' who is amenable to the punishment under our criminal laws and the provisions therein for enforcing fines and penalties."

However, the dramshop laws did not contain a section which defined the word "person" to include also a corporation and, therefore, we believe that the St. Louis Club case can have no application to the present liquor laws. The legislative intent seems to be clear to the effect that corporations can be licensed, and consequently punished criminally for violations of the

liquor laws. Consequently, we are of the opinion that a corporation can be charged and convicted in criminal proceedings involving violations of the Liquor Control Act. Any such violations would necessarily have to be committed by an officer, agent, servant or employe because it is elemental that a corporation can act only through such officers and agents.

The Missouri courts have held that agents and servants of liquor licensees can also be held liable criminally for violating the laws governing the sale of intoxicating liquor. In the case of State v. Robinson, 163 Mo. App. 221, l. c. 224, the court said:

"* * * * It is a familiar rule of law requiring no reference to authorities, that a person cannot escape punishment for an infraction of the criminal laws of the land on the plea that he was not acting for himself but as the agent of another. Therefore, if the transaction under consideration amounted to a sale of intoxicating liquor by the incorporated fraternal association (the lodge), defendant, as the agent by whose hand the law was violated, must suffer for the offense."

In the case of State v. Bales, 149 Mo. App. 351, the court said at l. c. 352:

"The defense offered testimony tending to prove that the defendant was not conducting the place of business where the tonic was purchased, and that the same was being conducted by a man by the name of Criss; that the defendant had been previously convicted for the same offense, and that the 'Regal Tonic' was not an intoxicating liquor.

"In as much as Mr. Stout testified

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that he purchased the tonic directly from the defendant, it made no difference whether the defendant or Criss was conducting the business."

CONCLUSION.

Consequently, it is our opinion that an officer, agent, servant or employe of a corporation licensee is criminally liable for the violations of the liquor laws in which such officer, agent, servant or employe actively participates.

It is also our opinion that the corporation itself is likewise criminally liable for the same offenses, and that both the corporation and the officer, agent, servant and employe, who have actively participated in such violations, are criminally responsible.

Respectfully submitted

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APPROVED:

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