

INTOXICATING LIQUOR - * Licensed one-room restaurants selling
CLOSED PLACE - substantial quantities of food etc., ex-
cepted from closed place requirement. Restaurant is eating house selling food for consumption on premises. Substantial quantities are actual amount of real value, as distinguished from pretense of substance.

October 9, 1941

Mr. W. G. Henderson
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Department of Liquor Control
Jefferson City, Missouri



Dear Sir:

This is in reply to your request for our opinion by your recent letter in the following terms:

"With respect to Senate Bill No. 116 passed by the General Assembly, now adjourned, to become effective October 10, 1941, I respectfully request your opinion upon the following subject:

"Briefly, this Bill provides that an intoxicating liquor licensee close his place of business during prohibited hours and days of sale with the exception of clubs, hotels, and restaurants.

"In this connection, I would appreciate your opinion upon what constitutes a bona fide restaurant. A copy of the Bill is enclosed herewith."

Senate Bill No. 116, to which you refer, amended R. S. Missouri, 1939, Sec. 4891, and is now Laws of Missouri 1941, p. 413, Sec. 4891. After prohibiting the sale of intoxicating liquor during certain days and hours, it in part further provides:

"* * * and if said person has a license to sell intoxicating liquor by the drink his premises shall be and remain a closed place as herein defined upon the day of any general, special or primary election in this State or upon any county, township, city, town or municipal election day and between the hours of 1:30 o'clock A. M. and 6:00 o'clock A. M. on week days and 12:00 o'clock midnight Saturday and 12:00 o'clock midnight on Sunday. * * * * * provided further, that where such licenses are held by restaurants whose business is conducted in one room only and substantial quantities of food and merchandise, other than intoxicating liquors are dispensed, then the licensee shall keep securely locked during the hours and on the days herein specified all refrigerators, cabinets, cases, boxes and taps from which intoxicating liquor is dispensed. A 'closed place' is defined to mean a place where all doors are locked and where no patrons are in the place or about the premises. Any person violating any provisions of this section shall be deemed guilty of a misdemeanor."

The ultimate question presented by your letter is: What is a restaurant? But at the outset it is necessary to discuss the provisions of the statute with reference to restaurants.

Under said Section 4891, supra, effective October 10, 1941, establishments licensed to sell intoxicating liquor by the drink, and which are not restaurants as therein described, must be closed places as defined in the statute on Sundays, various election days, and between 1:30 and 6:00 A. M., of week days.

With reference to a one-room restaurant selling substantial quantities of food and merchandise, etc., licensed to sell intoxicating liquor by the drink, etc., this statute does not expressly provide that such establishment is excepted from the requirement of being a closed place during the hours and days there mentioned. However, this statute provides that one who violates its terms shall be deemed guilty of a misdemeanor, and is a penal statute. Such statutes must be "strictly construed against the state." (State v. Green, 130 S. W. (2d) 475, l. c. 476, 344 Mo. 985.) They are subject to the rule stated in State v. Taylor, (Mo. Sup.) 133 S. W. (2d) 336, l. c. 341 (6-8), as follows:

"* * * * The statute is penal and criminal and such statutes are generally 'construed strictly as to those portions which are against defendants, but liberally construed in those which are in their favor-- that is, for their ease and exemption. * *"

Construing this statute strictly against the state, and liberally in favor of the "ease and exemption" of those who might be charged with its violation as defendants, we believe restaurants as described above are excepted from the "closed place" requirement, for the following reasons.

Of course, our business is to ascertain and give effect to the intention of the legislature. In Artophone Corporation v. Coale, (Mo. Sup.) 133 S. W. (2d) 343, l. c. 347 (2-4) the court said:

"* * * * 'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object * * .'"

Places other than such restaurants must have their doors locked and have no patrons in them during closed days and hours. The statute provides that such restaurants during the same periods must keep securely locked all cabinets, cases etc., from which liquor is dispensed. If the doors of such restaurants were locked and all patrons were out, that would prevent the dispensing of intoxicating liquor, and it would then be meaningless and superfluous to require that the cabinets, cases etc., in such restaurants be securely locked. In construing the Liquor Control Act, in State v. Wipke, 133 S. W. (2d) 354, l. c. 356 (1), the Supreme Court of Missouri said:

"It is a cardinal rule of construction that every word, clause, sentence and section of an act must be given some meaning unless it is in conflict with the legislative intent. (citing cases)
* * * * ."

Likewise, in Graves v. Little Tarkio Drainage Dist. No. 1, (Mo. Sup.) 134 S. W. (2d) 70, l. c. 78, it was ruled that:

"* * * a statute should be so construed that effect may be given to all of its provisions, so that no part, or section, will be inoperative, superfluous, * * .
* * * Moreover, it is presumed that the Legislature intended every part and section of such a statute, or law, to have effect and to be operative, and did not intend any part or section of such statute to be without meaning or effect.' State ex rel. Dean v. Daves, 321 Mo. 1126, 1151, 14 S. W. 2d 990, 1002. * * * * ." (Underlining ours.)

Having the foregoing principles in mind it is our opinion that the legislature meant the restaurants described in this statute may legally, during the days and hours mentioned, have their doors unlocked and may have patrons in the place, but must keep securely locked all cabinets, cases, etc., from which intoxicating liquor is dispensed, and must not sell any intoxicating liquor during Sunday and the other days and hours mentioned. We think it was the intention of the legislature that a bona fide restaurant business may be conducted during the days and hours mentioned, even though at those times the sale of intoxicating liquor is prohibited.

The exception is applicable only "where such licenses are held by restaurants whose business is conducted in one room only and substantial quantities of food and merchandise, other than intoxicating liquors are dispensed." The following definitions of a restaurant are found in 37 Words & Phrases (perm. ed.) p. 439:

"A 'restaurant' is an eating house. Cecil v. Green, 60 Ill. App. 61.

"A 'restaurant' is an establishment where refreshments or meals may be obtained by the public. Donahue v. Conant, 146 A. 417, 419, 102 Vt. 108."

And, at P. 442, of the same authority:

"'Restaurant,' as used in an ordinance requiring persons keeping a 'restaurant' to procure a license, etc., means an eating house, a place where something to eat ready prepared, or which can be readily prepared may be obtained; * *"

In Rex v. Wells, 24 Ont. L. Rep. 77, 18 Can. Crim. Cas. 377 the court said of a restaurant keeper that, "... it is of the essence of his calling that what he sells is sold for consumption on the premises."

A distinct analogy is found in State v. Shoaf, 9 A. L. R. 426, 1. c. 427, 428, 179 N. C. 744, 102 S. E. 705. There, a statute of North Carolina in part provided that, "No person... shall sell.. on Sunday, any goods. . .or merchandise. . . Provided, that this act shall not be construed to apply to ...restaurants." The court held that an establishment having no tables, and only stools and counters, and selling only lunches and sandwiches, was a restaurant and was excepted from the Sunday closing requirements of that statute. The court further said at l. c. 427, and l. c. 428 of 9 A. L. R.:

"* * * A restaurant is generally understood to be a place where refreshments, food, and drink are served. Whether they are served to guests seated at a table or on a stool at a counter does not affect the definition, that being merely a detail in the operation of the restaurant. The evidence shows that the defendant had no tables in his place, but had a counter with stools arranged along in front of it, and to the guests seated on these stools he sold lunches, wieners, and egg sandwiches. This, it seems to us, was strictly a restaurant business within the approved definition as shown in the dictionaries, and in 7 Words and Phrases, p. 6180. While the word 'restaurant' has no strictly defined meaning, it seems to be used indiscriminately as a name for all places where refreshments can be had, from a mere eating house and cookshop to any other place where eatables are furnished to be consumed on the premises. Richards v. Washington F. & M. Ins. Co. 60 Mich. 420, 27 N. W. 586; Lewis v. Hitchcock

(D. C.) 10 Fed. 4. It has been defined as a place to which a person resorts for the temporary purpose of obtaining a meal or something to eat (People v. Jones, 54 Barb. 311, 317), and a restaurant keeper as a caterer, who keeps a place for serving meals, and provides, prepares, and cooks raw materials to suit the taste of his patrons (Re Ah Yow (D. C.) 59 Fed. 561, 562; Swift & Co. v. Tempelos, 178 N. C. 487, 7 A. L. R. 1581, 101 S. E. 8; 7 Words & Phrases, pp. 6180 & 6181. * * * * *

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So far as appears, there was absolutely nothing done that would mar in the least the proper and peaceful observance of the Sabbath, no more than there would be in a well-conducted hotel or in one's home. Food and drink are necessary to the sustenance of man, and the statute was not intended to prohibit the furnishing of them to patrons when there is, in no other respect, a violation of the law alleged or shown."

Not all restaurants are excepted from the "closed place" requirement. The restaurant business must be "conducted in one room only." This undoubtedly refers to the serving and consumption of food; cooking in a separate room is permissible in restaurants otherwise coming within the excepted definition. Finally, to be excepted a restaurant must be one in which "substantial quantities of food and merchandise, other than intoxicating liquors are dispensed." The following definitions or descriptions of the word "substantial" are found in 40 Words & Phrases (perm. ed.) p. 492,493:

"Substantial' means 'of real worth and importance; of considerable value; valuable.' * * * Tax Commission of Ohio v. American Humane Education Soci. (Ohio App.) 181 N. E. 557.

* * * * *

" * * 'Substantial' is relative term, the meaning of which is to be gauged by all the circumstances surrounding the transaction, in reference to which the expression has been used. It imports a considerable amount or value in opposition to that which is inconsequential or small. Fuhrman v. American Nat. Building & Loan Ass'n, 14 P. 2d 601, 604, 126 Cal. App. 202.

* * * * *

" * * * The word 'substantial' is susceptible to different meanings according to the circumstances, and is variously defined as actual, essential, material, fundamental, although no rule of thumb can be laid down fixing its exact meaning. * * * * *"

"Quantity" means amount, how much. In 35 Words & Phrases (perm.ed.) 609 it is said that, "Quantity . . . according to Webster is that which answers the question how much. Texas & P. Ry. Co. v. Cuteman, (Tex.) 14 S. W. 1069, 1070."

"Merchandise" is a term "including all those things which merchants sell, . . . as dry goods, hardware, groceries, drugs, etc." (27 Words & Phrases (perm. ed.) 69, 70).

Under the above definitions of restaurant and of substantial quantities, it is plainly impossible to lay down a fixed rule to fit all cases. The style, size and extent

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of establishments included in the term may vary greatly. The amount and extent of food and other merchandise constituting substantial quantities also may vary widely. An establishment selling two hamburgers per average day might well be regarded as not dispensing substantial quantities of food, but one cannot say in advance exactly how much must be dispensed in order to constitute substantial quantities. In order to be excepted from the "closed place" requirement an establishment must actually and in good faith be engaged in the restaurant business as above defined, as a regular and continuous course of dealing.

CONCLUSION.

It is our opinion that restaurants licensed to sell intoxicating liquor by the drink, whose business is conducted in one room, and which dispense substantial quantities of food and merchandise other than intoxicating liquor, are excepted from the "closed place" requirement of Laws of Missouri, 1941, p. 413, Sec. 4891. A restaurant is an eating place where food ready or readily prepared may be obtained for consumption on the premises. A substantial quantity is an actual considerable amount of some real value, as distinguished from a mere inconsequential pretense of substance. In determining what establishments and what amounts are within the terms "restaurant" and "substantial quantities", discretion must be exercised in judging each case on its own facts.

APPROVED:

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EH:RW

Respectfully submitted

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