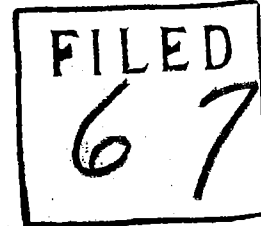


INTOXICATING LIQUOR: Supervisor may grant license to person indicted for violation of Act, if person has qualifications required by Act. May not grant license to person convicted for such violation by judgment and sentence of court.

May 26, 1941

Honorable C. Roy Noel, Supervisor
Department of Liquor Control
Jefferson City, Missouri



Dear Sir:

This is in reply to the request for our opinion by the letter of Mr. Wallace I. Bowers, Chief Clerk of the Department of Liquor Control, dated May 23, 1941, which letter is in the following terms:

"The September Term of the St. Louis Grand Jury returned one hundred four indictments last November against seventy seven St. Louis City licensees, all full liquor with the exception of one, and all misdemeanors except one felony. To date, there have been eight acquittals, four mistrials and two convictions. Effective June 30, the permits of these indicted persons expire.

Therefore, I respectfully request an official opinion upon the following question: Does this department have the legal right to renew permits for persons against whom criminal charges are now pending, said criminal charges being based upon Grand Jury indictments.

In view of the fact that the provisions of our Act require that all renewal applications should be filed with the department sixty days prior to expiration of the present permits on June 30, we would appreciate an opinion at an early date."

Said letter refers only to applicants for licenses to sell intoxicating liquor (including intoxicating beer) and not to applicants for licenses to sell non-intoxicating beer. The Liquor Control Act, applicable to intoxicating liquor, is in Chapter 32, Art. 1, R. S. Mo. 1939; the sections of the statute hereinafter referred to are a part of said Act.

Section 4895, among others, provides in part that "It shall be unlawful for any person... to sell ... in this state intoxicating liquor ... without taking out a license." The authority to issue licenses is vested in the Supervisor of Liquor Control (Sec. 4888). By Section 4890 it is in part provided that, "Any person who possesses the qualifications ... and who meets the requirements of ..." the Act may obtain a license.

On the specific point involved, Section 4906 in part provides:

" * * no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, * * ."

And, Section 4909 provides:

"Conviction in any court of any violation of this act shall have the effect of automatically revoking the license of the person convicted, and such revocation shall continue

operative until said case is finally disposed of, and if the defendant is finally acquitted, he may apply for and receive a license hereunder, upon paying the regular license charge therefor, in the same manner as though he had never had a license hereunder."

It is understood that the Supervisor has not revoked the licenses of the persons involved here, under his statutory power to do so (Section 4889, 4905), in certain circumstances. Under Sections 4906 and 4909, above quoted, conviction of any person of a violation of the Liquor Control Act of the State of Missouri automatically revokes the license of such person, and no new license can be granted to a person whose license has been revoked in that manner, or by the Supervisor. Nor can any license be granted to a person who has been convicted, since the ratification of the Twenty-First Amendment to the Constitution of the United States, of a violation of the liquor laws either of the United States or of the State of Missouri. But persons who are charged by indictment with a violation of the Liquor Control Act, and who have not even been tried, cannot be regarded as having been convicted.

The word "convicted" has been defined in some cases as meaning a finding of guilty by a jury after a trial, and in other cases as meaning the final judgment and sentence of a court. In State v. Williams, 6 S. W. (2d) 915, 1.c. 919(6), 320 Mo. 296, the Supreme Court of Missouri said:

"The word 'convicted' is commonly used merely to signify the finding of the jury that the accused is guilty. This is the well-settled meaning of the term as ordinarily used in constitutional and statutory provisions. 13 C. J. 903-905."

And, in State v. Townley, 147 Mo. 205, 1.c. 208, 209,

48 S. W. 833, the court quoted with approval and made the following statements from the authorities;

"It has generally been held that the word "convicted" includes the final judgment, and that one who has been found guilty by the jury, but has not yet been sentenced, is not a "convicted" person."

"In ordinary phrase the meaning of the word 'conviction' is, the finding by the jury, of a verdict that the accused is guilty. But in legal parlance, it often denotes the final judgment of the court."

When the term "convicted" is used in a statute referring to the various steps in the proceedings of a particular case it means a verdict of guilty. But when it is used as affecting the status or rights of a person in another and subsequent case, convicted includes the judgment and sentence of the court. This distinction is explained in Smith v. Commonwealth of Va., 24 A.L.R. 1286, 1290, 113 S.E. 707, 134 Va. 589, where the court reviewed the authorities and in part quoted the following at l.c. 1290 of 24 A.L.R.:

" * * but where the reference is to the ascertainment of guilt in another proceeding in its bearing upon the status or rights of the individual in a subsequent case, then a broader meaning attaches to the expressions, and a "conviction" is not established or a person deemed to have been "convicted,"

unless it is shown that a judgment has been pronounced upon the verdict.'" (Also see 9 Words & Phrases (Perm. ed.) p. 594 et seq.)

As used in the above quoted portions of the Liquor Control Act the term "convicted" means adjudged guilty by the judgment and sentence of a court. The persons here involved have not been convicted. They have been indicted, and that is a mere accusation. In State v. Anderson, 191 Mo. 134, 142, 90 S. W. 95, 98, the court defined an indictment as follows at p. 142 of 191 Mo.:

"An indictment is an accusation at the suit of the king (or State) by the oaths of twelve men (at the least, not more than twenty-three) of the same county wherein the offense was committed, returned to inquire of all offenses in general in the county, determinable by the court in which they are returned, and finding a bill brought before them to be true."
(To the same effect, Ballentine's Law Dict. p. 635).

Such an accusation does not raise any presumption of guilt (21 Words & Phrases (perm. ed.) p. 141 et seq.) On the contrary every person accused of committing a crime is presumed to be innocent until he has been proved guilty beyond a reasonable doubt (State v. Shawley 67 S. W. (2d) 74, l.c. 83, 334 Mo. 352; State v. Shields 58 S. W. (2d) 293, l.c. 297 (7), 332 Mo. 89). That principle is one of the fundamental safeguards of the liberty of the people, and it is the duty of every public officer to be governed by it. Because of that presumption the universal rule is that proof that a person has been charged with a crime is not admissible in another case to impeach his credibility (State v. Hamilton, 102 S. W. (2d) 642, l.c. 646 (10), 340 Mo. 768). No person should be subjected to any adverse

discrimination on the sole ground that he has been indicted. Because of all the foregoing, the sole fact that a person has been charged by indictment with a violation of the Liquor Control Act is not a legal ground for refusal by the Supervisor to renew the license of such person.

Under the above quoted statutory provisions the Supervisor may legally refuse to renew or grant originally a liquor license to any person who fails to meet the following requirements and qualifications of Section 4906:

"No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village;
* * * * *

Speaking of the power of the Supervisor respecting the granting of licenses in State ex rel Renner v. Noel, 149 S. W. (2d) 57, 1.c. 58, 59, the Supreme Court of Missouri said:

"* * * In discharging that function he exercises a judicial discretion which cannot be controlled by mandamus, at least unless he finds in favor of the applicant every fact necessary to entitle the latter to a license, thereby exhausting his discretion and leaving only the ministerial duty of issuing the license. The decision of the Supervisor on the merits is final, and the statute does not allow an appeal or writ of error. This is held in several cases: * * * * *"

"We see nothing in the record to justify the action of the trial

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court in attempting to overturn by mandamus the Supervisor's refusal of a license to the respondent because he was not a person of good moral character. The record shows he made that ruling on facts reported by his subordinates which he believed to be true. While Sec. 26 of the 1934 Act (Mo. St. Ann. section 4525g--30, p. 4689) does provide for notice and a hearing where a license is revoked, the Act does not anywhere provide for formal proceedings or hearings and the reception of evidence where a license is applied for. There is no requirement as to the form or character of the evidence upon which the Supervisor may rely. Certainly there is no showing that he acted arbitrarily in this instance."

Even under that authority the Supervisor may refuse to issue a license only on one of the legal grounds provided by the statute.

CONCLUSION

The Supervisor of Liquor Control has a legal right to renew the licenses of persons who have been charged by indictment with violations of the Liquor Control Act, provided such persons meet the requirements and qualifications of said Act. Licenses cannot be renewed for or granted to persons who have been convicted of violation of said Act. In said Act, the term "convicted" means adjudication of guilty by judgment and sentence of the court.

Respectfully submitted

APPROVED:

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