

LIQUOR: When appropriation of Treasurer exhausted,
Liquor Supervisor may purchase stamps out
BEER STAMPS: of his printing appropriation.

June 22, 1942

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Honorable Wilson Bell
State Treasurer
Jefferson City, Missouri

Dear Mr. Bell:

This is in reply to your request for our opinion
by your letter dated June 17, 1942, which is in the follow-
ing terms:

"The Sixty-first General Assembly appropriated, for the use of the State Treasurer in paying the expenses of providing stamps for the collection of inspection fees for the manufacture and sale of beer, the sum of \$15,000.00. This amount has been expended, and the State Liquor Department has asked us for five million 4 $\frac{1}{2}$ ¢ stamps to be used on the enlarged bottles as ordered by the War Production Board. These additional stamps will cost approximately \$2,500.00.

"Inasmuch as we do not have the money to buy these stamps, which will return to the Treasury about one-fourth million dollars in revenue, we are asking you if it will be unlawful for the Department of Liquor Control to pay for these stamps out of their Operation Funds, as set out on Page 197, Laws of Missouri, 1941. Mr. Henderson, the Supervisor, informs us that he has the money and will be glad to pay for the stamps if it can be legally done."

With reference to stamps evidencing payment of the inspection fee on intoxicating beer, Section 4923, R. S. Missouri, 1939, in part, provides:

"It shall be the duty of the state treasurer, upon the taking effect of this act, to provide suitable and inimitable state certificates and labels for this inspection, gauging and labeling, having on each proper places for countersigning by the state treasurer and supervisor of liquor control, and shall safely keep the same together with the plates used in making them, when not in actual use. The state treasurer shall from time to time upon demand, deliver the aforesaid labels to the supervisor of liquor control, * * * * *."

Regarding stamps evidencing payment of such tax on nonintoxicating beer, Section 4968, R. S. Missouri, 1939, in part, provides:

"It shall be the duty of the state treasurer to secure and furnish to the supervisor of liquor control suitable and inimitable labels and certificates, which may be in combination, and stamps, of such denominations as the supervisor of liquor control may require for the purposes of this article. * * * * *
* * * * * The state treasurer shall from time to time, upon the written requisition of the supervisor of liquor control, issue and deliver to said supervisor such number of labels and certificates and such amount of stamps as may be required by such requisition and take the receipt of said supervisor therefor. * * * * *."

In this connection, the exhausted appropriation of the State Treasurer, for the year 1942, is found in Laws of Missouri, 1941, page 134, section 18, which provides:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue fund; for the use of the State Treasurer in paying the expenses of providing stamps for the collection of inspection fees for the manufacture and sale of beer, the sum of Fifteen Thousand Dollars (\$15,000.00), or as much thereof as may be necessary for said purpose."

Appropriations to the Treasurer for other periods, and for other functions connected with the liquor traffic, are at Laws of Missouri, 1941, pp. 38, 39, sections 21 and 22.

The available appropriation of the Supervisor of Liquor Control is found in Laws of Missouri, 1941, p. 197, section 36, which in part provides:

"There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, * * * * * to the Department of the Supervisor of Liquor Control, to pay for the personal service, additions, and operating expenses required in connection with the administration of the Liquor Control Law, for the years 1941 and 1942, as follows: * * * * *

"C. Operation;
General expenses consisting of communication, printing and binding, transportation of things, travel, rent, obtaining evidence,

stationery, office supplies,
witness fees, and mileage and
other general miscellaneous
expenses, insurance and premiums
on bonds \$196,200.00."

An appropriation for another period is in Laws of Missouri, 1941, page 100, section 48.

In answering your question, attention must be given to the purpose for which the stamps are used, and the duties of the Supervisor of Liquor Control in that regard.

With reference to nonintoxicating beer, Section 4956, R. S. Missouri, 1939, provides that the Supervisor, "shall collect, for the inspection of nonintoxicating beer, inspection fees at the rate of sixty-two cents (62¢) per barrel * * *." The stamps involved here are sold by the Supervisor to the dealers, and are the "stamps evidencing the payment of the inspection fees by this article required * * *." Section 4967, R. S. Missouri, 1939. Said stamps must be affixed to the containers and packages of beer (Section 4972, R. S. Missouri, 1939), and the fees so collected by the Supervisor must be paid into the State Treasury. (Section 4982, R. S. Missouri, 1939).

Substantially the same provisions are in the law applicable to intoxicating beer. It is the duty of the Supervisor to inspect such beer, and the same kind of stamps or labels must be affixed to the containers of such beer (Sections 4920, 4922, R. S. Missouri, 1939). The Supervisor must collect the same amount, "sixty-two cents (62¢) per barrel," for the inspection of intoxicating beer (Section 4925, R. S. Missouri, 1939). Finally, it is unlawful for anyone to transport or sell any beer except in containers bearing the stamps and labels evidencing payment of the inspection fee (Section 4932, R. S. Missouri, 1939).

The obvious intent of the Legislature, in enacting all of the above cited statutes, was to provide for the collection of revenue.

Since the appropriation of the State Treasurer for purchasing the inspection fee or tax stamps has been exhausted, we must decide whether the Supervisor of Liquor Control may pay for the purchase of the stamps. Looking only at the statutes applicable to the State Treasurer, it might appear on the surface that the question is governed by the maxim, "Expressio unius est exclusio alterius." That is a rule sometimes applied by the courts in construing ambiguous statutes. It means that, "where the statute . . . limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done." Keane v. Strodtman, 18 S. W. (2d) 896, 1. c. 898 (2-4), 323 Mo. 161. In other words, the rule is that the expression of one thing or method in an ambiguous statute is the exclusion of another.

In construing statutes, the primary object is to ascertain and effectuate the real intention of the Legislature. Technical maxims of construction should be used only where there is ambiguity. It was so ruled in State ex rel. Wabash Ry. Co. v. Shain, 106 S. W. (2d) 898, 1. c. 899, 900, 341 Mo. 19, where the court said:

"* * * * * The cardinal rule to be followed in the construction of statutes is to arrive at the legislative intent. 'Rules for the interpretation of statutes are only intended to aid in ascertaining the legislative intent, "and not for the purpose of controlling the intention or of confining the operation of the statute within narrower limits than was intended by the lawmaker.'" Sutherland on Statutory Const., Sec. 279. If the intention is clearly expressed, and the language used is without ambiguity, all technical rules of interpretation should be rejected."

It is always true, as ruled in Bragg City Special Road District v. Johnson, 20 S. W. (2d) 22, 1. c. 25 (3), 323 Mo. 990, 66 A. L. R. 1053, that:

"* * * * the results and consequences of any proposed interpretation of the statute may properly be considered as a guide as to the probable intent of the lawmaker from the language used. Kane v. Kansas City, Ft. Scott & M. Ry. Co., 112 Mo. 34, 20 S. W. 532; State ex rel. v. Slover, 126 Mo. 652, 661, 29 S. W. 718."

If the State Treasurer were the only officer who could pay for the stamps, then no stamps would be provided at all, during the remainder of this year, and no revenue would be collected. Revenue in the amount of one-quarter of a million dollars would be lost.

The Legislature did provide that it, "shall be the duty of the State Treasurer to secure and furnish . . . to provide, the stamps." Sections 4968 and 4923, supra. The plain object of all the statutes is to obtain revenue. The Legislature also provided that the, "supervisor . . . shall collect," the tax (section 4956, supra). The Supervisor has the duty to sell the stamps to beer manufacturers and dealers, and the stamps, "shall, by the manufacturer or distributor, be placed upon each package," of beer (section 4967, R. S. Missouri, 1939).

The duty of the Supervisor is as plain as the duty of the Treasurer, and cannot be performed without stamps. We believe that when the Legislature imposed the above mentioned duty upon the Supervisor, it meant he was to discharge that duty with all the means at his disposal, and intended that if it should become impossible for the Treasurer to purchase stamps, that the Supervisor should buy the stamps and collect the tax. This view is strengthened by the fact that the Legislature provided a method whereby the Supervisor can purchase stamps. The appropriation of the Supervisor includes funds for printing. The stamps are printed, and, in the circumstances of this case, may, in our opinion, lawfully be paid for out of the Supervisor's appropriation.

When all of the statutes are read together, there is no ambiguity. Therefore, such technical rules of construction

as the expressio unius etc. rule, are not needed. It was so ruled by the Supreme Court of Missouri in City of St. Louis v. Baskowitz, 201 S. W. 870, l. c. 873, 273 Mo. 543, and the court said:

"* * * In other words, the maxim 'Expressio unius est exclusio alterius' has no application where the statute upon its face clearly conveys a contrary intention of the Legislature."

The same reasoning was applied by the learned Judge Barclay, then of the St. Louis Court of Appeals, in McFarland v. M. K. T. Ry. Co., 94 Mo. App. 336, l. c. 342, 343, 68 S. W. 105, in the following terms:

"The maxim which declares that the expression of one thing is the exclusion of others not expressed, should be applied only where it appears to point to the legislative intent. The maxim is useful as an aid to discover that intent, but it should never override a different purpose plainly indicated.
* * * * *

To the same effect is City of Lexington v. Bank, (K. C. Ct. App.) 130 Mo. App. 687, l. c. 692, 693, 103 S. W. 1095.

May we recommend that all of the present procedure with reference to accounts, the keeping of the stamps by the Treasurer, and issuance of stamps by him to the Supervisor, should be maintained.

Honorable Wilson Bell

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CONCLUSION.

Under the above mentioned authorities, it is our opinion that when the State Treasurer has exhausted his appropriation provided for the purchase of beer stamps, the Supervisor of Liquor Control may lawfully purchase and pay for such stamps out of his appropriation for printing.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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