

INTOXICATING LIQUOR
ELECTION

Construing Section 4890, RSMo 1939

September 29, 1943



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

Dear Mr. Henderson:

This will acknowledge receipt of your request for an official opinion, under date of September 10, 1943, which reads:

"I respectfully request your opinion as to my duties under Section 4890, R. S. Mo. 1939.

"It is my understanding that, in determining whether or not a city has a population of 20,000 inhabitants, for the purpose of issuing a license for the retail sale of intoxicating liquor by the drink, I must look to the last census of the United States.

"The questions arise where towns claim a population of more than 500 since the last census.

"First, can a town that did not have a population of 500 at the last census decide that it has reached that figure and recognize a petition for an election.

"Second, if a town that did not have a population of 500, as shown by the last census, holds an election and certifies the result as required by law, is it my duty as supervisor of liquor control to recognize such certificate and issue licenses, or is it obligatory on me to refuse to issue."

One of the primary rules of Statutory Construction is to ascertain and give effect to lawmakers intent.

In *Artophone Corporation v. Coale*, 133 S.W. (2d) 343, 1.c. 347, 345 Mo. 344, the court said:

"Of course '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 and "the manifest purpose of the statute, * * *'"

Section 4890, R. S. Mo. 1939 reads:

"Any person who possesses the qualifications required by this act, and who meets the requirements of and complies with the provisions of this act, and the ordinances, rules and regulations of the incorporated city in which such licensee proposes to operate his business, may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this act defined, by the drink at retail for consumption on the premises described in the application: Provided, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold, in any incorporated city having a population of less than twenty thousand (20,000) inhabitants, until the sale of such intoxicating liquor, by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of said city. Such authority to be determined by an election to be held in said cities having a population of less than twenty thousand (20,000) inhabitants, under the provisions and methods set out in this act. The population of said cities to be determined by the last census of the United States completed before the holding of said election: Provided further, that for the purpose of this act, the term 'city' shall be construed to mean any municipal corporation having a population of five hundred (500) inhabitants or more: Provided further, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five (5%) per cent

by weight, by the drink at retail for consumption on the premises where sold, outside the limits of such incorporated cities. In each instance, a bond in the sum of two thousand (\$2,000.00) dollars, with sufficient surety, to be approved by the supervisor of liquor control, must be given for the faithful performance of all duties imposed by law upon the licensee, and for the faithful performance of all the requirements of this act, and any violation of such conditions, duties or requirements shall be a breach of said bond and shall automatically cancel and forfeit the license granted hereunder: Provided, that no person financially interested in the sale of intoxicating liquor at wholesale shall be accepted as surety on any such bond."

The above statutory provision specifically provides, that for the purpose of this act the term 'city' shall be construed to mean any municipal corporation having a population of 500 inhabitants and further that the population of said cities is to be determined by the last census of the United States taken before the holding of said election. All of which clearly indicates to the writer that no city may entertain a petition for an election that did not have a population of at least 500 as shown by the last census of the United States immediately preceding said election, and if such an election is held in a city not having 500 inhabitants according to the last United States census, then under the foregoing statutory provision you as Supervisor of the Department of Liquor Control for the State of Missouri, are not authorized to issue any liquor permits to applicants residing in said city, since the Office of Supervisor of the Department of Liquor Control is created by Statute and such officer is vested only with such powers as are expressly contained in the Statute.

In *State v. Wymore*, 132 S.W. (2d) 1.c. 988, the court said:

"Necessary implications and intendments from the language employed in a statute may be resorted to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a

power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication.'"

CONCLUSION

Therefore, it is the opinion of this Department that no election may be held in any city under Section 4890 supra, when the last United States Census immediately preceeding said election shows there were less than 500 inhabitants residing in said city, and futhermore you as Supervisor of the Department of Liquor Control are unauthorized to issue any liquor license to any applicant residing in said city.

Respectfully submitted,

Aubrey R. Hammett, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General