

LIQUOR CONTROL: Re: The bond required by Section 4960, Laws of 1945, is an indemnity bond and not a forfeiture bond.

FILED  
13

April 7, 1947

Honorable Edmund Burke,  
Supervisor  
Department of Liquor Control  
State Office Building  
Jefferson City, Missouri

Dear Sir:

Your opinion request of recent date has been referred to the writer for answer. Therein you ask:

"Will you please let me have your official opinion, at your earliest convenience, as to whether the bond provided for by Section 4960, Laws of Missouri, 1945, House Bill No. 427, Sixty-Third General Assembly, is a forfeiture bond or an indemnity bond."

Section 4960, Laws of Missouri, 1945, enacted in House Bill No. 427 by the 63rd General Assembly provides as follows:

"Application for license to manufacture or sell non-intoxicating beer, under the provisions of this act, shall be made to the Supervisor of Liquor Control. Before any application for license shall be approved the Supervisor of Liquor Control shall require of the applicant a bond, to be given to the state, in the sum of Two Thousand Dollars, with sufficient surety, such bond to be approved by the Supervisor of Liquor Control, conditioned that the person obtaining such license shall keep at all times an orderly house, and that he will not sell, give away or otherwise dispose of, or suffer the same to be done about his premises, any non-intoxicating beer in any quantity to any minor, and conditioned that he will not

violate any of the provisions of this act and that he will pay all taxes, inspection and license fees provided for herein, together with all fines, penalties, and forfeitures which may be adjudged against him under the provisions of this act. Reenacted Laws 1945, p. \_\_\_\_\_, H. B. No. 427, § 1."

There has been no judicial examination or interpretation of the above quoted statute answering the specific question propounded by your request; therefore it is necessary for us to turn to the general rules of law and the analogous situations in order that we may determine the question presented to us. The Missouri Liquor Control Act deals with two subjects, that of intoxicating liquors and that of nonintoxicating liquors. In that portion of the Liquor Control Act which refers to intoxicating liquors, Section 4890, R. S. Missouri 1939, (Laws of 1933-34, Ex. Sess., P. 77, §13a), which requires a bond, was analyzed and judicially examined in the case of State vs. Wipke, 345 Mo. 283, 133 S.W. 2d 354, wherein the court held, among other things, that the bond required by that section was a forfeiture bond. Furthermore in the Wipke case, cited supra, the court specifically found that Section 4896, R. S. Missouri 1939, (Laws of 1933-34, Ex. Sess., p. 77, §19) had to be eliminated and that the bond there under discussion was governed solely by Section 4890, R. S. Missouri 1939. Therefore Section 4890, R. S. Missouri 1939, under the findings of the Missouri Supreme Court cannot be considered as pertinent to the present inquiry for no similar section is found in that portion of the Liquor Control Act relating to nonintoxicating liquor.

Section 4896, R. S. Missouri 1939, (Ex. Sess., §19, was questioned in the case of State vs. Vienup, 147 S.W. 2d 627. The Court there had before it for determination precisely the same proposition that is presented in your opinion request. At l.c. 628, the Supreme Court of Missouri, speaking through Judge Hays, in regard to the question there presented stated:

"The question for our determination therefore is this: Is the bond sued upon one of forfeiture or one of indemnity? The answer to this question must turn on the construction to be given the statute under which the giving of the bond is required and which prescribes its terms; for, under the well-settled rule in this state, any

required provisions of the condition of the bond found in the statute but omitted from the instrument itself must be read into it, and, conversely, terms which are found in the condition of the bond but not in the statute are to be disregarded. State v. Wipke, 345 Mo. 283, 133 S.W. 2d 354, and cases there cited."\*\*\*\*\*

Also in the Vienup case, cited supra, the Supreme Court at l. c. 629, specifically pointed out the fact that a difference did exist between the two sections of the statute, Section 4890, R. S. Missouri 1939, as discussed in the Wipke case, cited supra, and Section 4896, R. S. Missouri 1939, as there under discussion in the Vienup case.

"\*\*\*\*\*Section 19, however, differs materially from section 13a. It sets out in detail the condition of bonds to be given in compliance with its mandate. In particular it requires among other things that the bond so given shall be conditioned that the principal obligor will pay "all taxes, inspection and license fees provided for herein, together with all fines, penalties and forfeitures which may be adjudged against him under the provisions of this act."

In summation of the Vienup case, the court's reasoning for holding the bond required by Section 4896, R. S. Missouri 1939, to be an indemnity bond rather than a forfeiture bond is found in the following quotation:

"Recurring now to the specific provisions of Section 19: What then did the legislature mean by saying that the bond should stand as security for the payment of taxes and fees? Included among the taxes and fees so secured are, of course, those payable to the state directly, but there are also other taxes and fees "provided for herein". Section 24 of the act, Laws 1933, Ex. Sess. p. 87, provides for license charges to be fixed by and paid to counties, and section 25 of the amended Act of 1935, Laws of 1935, p. 267, Mo. St. Ann. § 4525g-29, p. 4689, provides for license

fees to be collected by counties and municipal corporations. Certainly such taxes and license fees are to be included in those specified in section 19. Assume that a licensee has breached his bond by violating some minor state regulation and has also breached it by failing to pay some local fee authorized under the act. In this situation, if the bond be construed as one of forfeiture, would the governmental unit which first sued be permitted to collect the whole amount of the bond leaving the other without remedy? Would not such a construction lead to an unseemly race between various governmental agencies for priority in obtaining and collecting judgments?

Considering the language of the act in regard to "fines, penalties and forfeitures", we think such language reasonably construed can mean only that where a fine, penalty or forfeiture is imposed upon a licensee because he has violated some term of the act or some regulation lawfully made thereunder, the amount of such fine, penalty or forfeiture may be collected from him and his surety by suit on the bond. So construed, is not the bond one of indemnity only? For consider, if a licensee be fined \$500 for a violation of the act and the state elects to collect the fine by imprisoning the defendant until it is paid, or by issuing a general fi. fa. and levying it upon his lands and chattels, only the amount of the \$500 fine plus the costs could be collected. If, however, the bond is to be construed as one of forfeiture, then the state might elect to collect the fine by suit against the surety under the bond, in which event it would recover \$2,000. Can this sort of inconsistent result have been intended by the legislature? We think not.\*\*\*\*\*

Again, we recall the provisions of § 19 which make the bond stand as security for the collection of fines and penalties which are assessed for violation of the act. See § 43 in the original act and the amendment thereto,

Laws of 1935, p. 267, Mo. St. Ann. 4525g-48, p. 4689. It is to be noted that the fines and penalties so assessed cover all violations of the act and the regulations lawfully made thereunder."\*\*\*\*\*

With the above quoted statements of the court in mind it is now well to point out that the Liquor Control Act in both portions, that portion referring to intoxicating liquors and that portion referring to nonintoxicating liquors, contains an identical statute requiring the giving of a bond by the applicant for a license. Upon reading the two statutes, Section 4896, R. S. Missouri 1939, and Section 4960, Laws of Missouri 1945, House Bill No. 427, it is obvious that there is no discrepancy or difference, even in terminology, between the two sections, other than that Section 4896 uses the term "intoxicating" and Section 4960 uses the term "nonintoxicating". In considering Section 4896, R. S. Missouri 1939, the Supreme Court came to the conclusion that that section provided for an indemnity bond. Specifically the court held:

"In conclusion, we are irresistibly forced to construe this bond as one of indemnity and not one of forfeiture. The learned trial court therefore erred in holding that it belonged to the latter class. This conclusion is not at all inconsistent with our holding in the Wipke case, supra. In that case we found it necessary to eliminate § 19 and to decide that the bond there given was governed solely by § 13a, in order to reach the conclusion that the bond there before us was one of forfeiture. Implied in that holding is the opinion that a bond governed by § 19, as this one is, would be a bond of indemnity".

As stated supra there has been no judicial interpretation of Section 4960, Laws of Missouri 1945, as to whether or not the bond required by said section is an indemnity or a forfeiture bond. However since the court in the Vienup case, cited supra, has specifically held that Section 4896, a section which is identical with Section 4960, Laws of Missouri 1945, as requiring a bond in the nature of an indemnity bond, then by analogy, it can be reasoned that the bond required under the provisions of Section 4960, Laws of 1945, would be a indemnity bond and not a forfeiture bond.

CONCLUSION

Upon the above stated rules and reasoning it is the opinion of this department of the State government that the bond required under the provisions of Section 4960, Laws of 1945, House Bill No. 427, is an indemnity bond and not a forfeiture bond.

Respectfully submitted,

WILLIAM C. BLAIR  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General  
WCB:if