

LIQUOR:
JUDGMENTS:

Intoxicating liquor may be sold under execution to satisfy a judgment for a debt.

April 9, 1949

Honorable B. C. Tomlinson
Prosecuting Attorney
St. Francois County
Farmington, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"I would like to get an opinion from your office with reference to the following situation:

"A is a licensed retail liquor dealer in St. Francois County and carries a stock of intoxicating liquors for sale in original packages. B has a judgment against A for debt on which an execution has been issued by the Magistrate. Is there any legal reason why the Sheriff may not make levy and sale of A's stock of liquors to satisfy the execution the same as he could do with respect to other personal property belonging to A?"

volume 33, C.J.S., Section 23, lays down the general principle of law relative to the sale of intoxicating liquor under executions, that unless intoxicating liquor is specifically exempt from such executions, it is property and subject to sale and execution. Said section reads:

"On the ground that intoxicating liquors are property, and that they are not within any enumerated exception or exemption, it has been held that they are subject to levy and sale under execution on the same basis as any other property notwithstanding the existence of statutes regulating or prohibiting the sale of intoxicating liquors, execution sales not being deemed within the prohibition of such statutes. However, there is authority to the contrary, some courts holding broadly that such prohibitory statutes render intoxicating

liquors not subject to levy and sale on execution. Where the applicatory statute does not merely regulate or prohibit the sale of intoxicating liquor, but absolutely destroys the right of property therein, it is not subject to execution sale."

Also Volume 7, C.J.S., Section 74a, Subsection 10, page 249, lays down the principle, that where the keeping of intoxicating liquor is lawful, such property may be attached like any other property and reads:

"Where the keeping of intoxicating liquor is lawful, such property may be attached like any other property."

In *Murphy v. St. Joseph Transfer Co.*, 235 S.W. 138, 1.c. 139, the court in holding that intoxicating liquor lawfully acquired and kept, is protected by the laws affecting property rights as any other property, said:

"(2) This argument is neither conclusive nor convincing, for the reason that the laws and regulations above quoted apply exclusively to the sale of intoxicating liquors for beverage purposes. The record shows that the liquor in question was lawfully acquired, and it is a rule of law that liquors so acquired and kept are as much surrounded and protected by the laws affecting property rights as any other property."

Under Section 4884, Mo. R.S.A., in this state any person may possess intoxicating liquor providing that the container properly has affixed thereto stamps of the Director of Revenue, evidencing payment of fees and charges required under the Liquor Control Act.

Under Section 4898, Mo. R.S.A., it requires any person manufacturing, distilling, blending, selling or offering for sale intoxicating liquor within this state, wholesale or retail, to first procure a license from the Supervisor of Liquor Control. Apparently, it was not the legislative intent to include in Section 4898, supra, sale of intoxicating liquor under execution for the payment of debts, since such a sale would not be for wholesale or retail.

The Liquor Control Act specifically authorizes railroads and express companies doing business in this state to sell unclaimed or refused shipments of intoxicating liquor in the same manner as the sale of other unclaimed shipments without first procuring a license from the Supervisor of Liquor Control authorizing such sale. Furthermore, under Section 4912, R.S. Mo. 1939, it makes it unlawful to sell or to give away warehouse receipt or receipts of intoxicating liquor, without first securing the permission of the Supervisor of Liquor Control, which would indicate under the well established rule of statutory construction, that the expression of one thing is the exclusion of another, that it is not necessary to first obtain a license from the Supervisor of Liquor Control to sell intoxicating liquor under an execution.

We find no court decisions in this state directly in point, however, this identical question has been passed on in other jurisdictions. In Nutt v. Wheeler, 30 Vt. Rep. 436, l.c. 439,440, the court in holding that intoxicating liquor lawfully held is subject to attachment and sale for debts said:

"* * *We can not presume it for the sake of reversing a judgment of the county court. But it was said in the argument that this liquor was not subject to attachment, and that therefore the defendant can not justify the taking under his process.

"But why not? It is assumed by the plaintiff's counsel that it is property, and held by the plaintiff for a lawful purpose, and if so, it should be protected in his hands, and subjected to his debts, in common with his other property. It could be sold on the execution for a lawful purpose, and we can hardly presume, in the absence of proof, an intent to sell it for an unlawful purpose, and thereby contaminate the attachment."

* * * * *

In Fears et al. v. The State, 102, Ga. 274, the court in holding that intoxicating liquors are subject to sale under execution for payment of debts of the owner said:

"* * * We have heretofore seen that liquors are property under the common law; that this right of property is not destroyed by legislation which prohibits a sale of such liquors; and being

property, they are subject to the payment of the debts of the owner. It must follow that a valid lien may be created thereon, and that the lien of a judgment rendered against the owner attaches in the same manner as it would attach to other property. The binding force of judgments rendered attaches to all the property of the defendant, both real and personal, from the date of such judgment, subject only to such exceptions as are made in our code. Civil Code, Sec. 5351.

"* * * The laws in force impose substantially the same penalties for sales without license as are imposed by the act under consideration for making sales prohibited. It has been repeatedly held by the courts of different States, that the requirement of a license in order to authorize such sales did not extend to officers making sales under the processes of the court. 77 Mich. 483; 33 N.H. 441; Black on Intoxicating Liquors, Sec. 139. In the application of the principle involved, the courts have gone further and held that by an assignment in insolvency the debtor's liquor passes like other property; that while an administrator would not be authorized to carry on the business of his decedent under the latter's license, yet if in the process of his duty he was reducing the assets of the estate to cash and sold the stock of liquor at a public sale or otherwise in large quantities, either for money or in composition of the debts of the estate, such a sale would not be one contemplated by the license law. 17 Wis. 463. * * *

"3. From what has been said above, it must follow as our conclusion, that a lawful sale of liquors seized under execution can be made by an officer in executing the process of the court, and that such sale is not repugnant to the provisions of the act of 1885, and that a sale so made is not of itself a public nuisance, nor will it be enjoined on that ground in any county of this State."

See also Wildermuth v. Cole, 77 Mich. 483, wherein the court said:

"The contention of counsel for the plaintiff is that the sheriff could not legally levy upon and sell intoxicating liquors under attachment and execution. It is not claimed that the liquors levied upon were exempt under any statute of this State, but that, inasmuch as the sheriff had not paid the tax and filed the bond required by the liquor law from all persons selling intoxicating liquors, the levy and sale is void.

"Section 1 of the Liquor Law of 1887 requires all persons engaged in the business of manufacturing, selling, or keeping for sale intoxicating liquors to pay the tax on the business. Section 8 provides that all such persons shall give a bond before commencing such business, etc.

"The sheriff, in making sales of these liquors under his execution, was not, within either the letter or spirit of this statute, engaged in the business of selling intoxicating liquors. Under the conceded facts, the plaintiff was legally liable for the amount named in the execution; and there is no more reason why his property should not be sold to satisfy it than the property of another, which consists of horses or other chattels. The learned circuit judge was correct in directing the verdict for the defendant."

There is no statute in this state exempting intoxicating liquor from executions to satisfy judgments for debts.

CONCLUSION

Therefore in view of the foregoing authorities and decisions and in the absence of any specific statutory inhibition against the sale of intoxicating liquors under an execution, it is the opinion of this department that in this instance the sheriff may levy and sell the stock of liquors to satisfy the execution.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

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