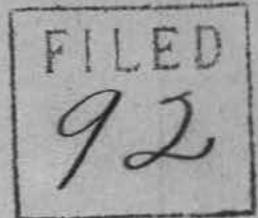


LIQUOR

Conviction of employee does not  
have effect of automatically revoking  
permit of licensee.

CRIMINAL LAW

February 28, 1949



Honorable Jasper R. Vettori  
First Associate Prosecuting Attorney  
City of St. Louis  
Municipal Courts Building  
14th and Markets Streets  
St. Louis, Missouri

3-14

Dear Sir:

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

"I desire the benefit of an opinion from you  
in connection with the following matter:

"The various laws regulating the sale of intoxicating liquor and with respect to operating establishments where intoxicating liquor is sold in every instance regulates not only the licensee but also applies to an employee.

"For a violation of these various laws, Section 4909, Laws of Missouri, 1941, provides that conviction shall have the effect of automatically revoking the license of the person convicted. I am familiar with the case of Ex-Rel Henderson, 182 S.W. (2d) 292, holding that suspension or revocation of a license following a hearing by the Supervisor of Liquor Control is an exercise of discretion. The question is, does that apply where the law makes it mandatory to revoke the license on conviction? The second question is, does the conviction of an employee of the licensee for a violation of one of these laws make it mandatory that the license issued to the licensee be revoked? In posing this question I have in mind Regulation No. 15 of the Department of Liquor Control, where it is stated that licensees are at all times directly responsible for any act or conduct of any employee."

Section 4909, R. S. Mo. Anno., which is a part of the Liquor Control Act provides that a conviction in any court of any violation of the Liquor Control Act shall have the effect of automatically revoking the license of the person convicted and further provides that if the defendant is finally acquitted he may apply and receive a license upon the payment of the regular license fee just the same as though he had never been licensed. Section 4909 reads:

"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; provided, however, that the provisions of this section shall not apply to violations of Section 4879, Article 1, Chapter 32, R.S. Mo. 1939, and violations of said Section 4879 shall be punished only as provided in said section."

Regulation 15 (a) promulgated by the Supervisor of Liquor Control, State of Missouri, makes licensees at all times responsible for the acts of the employees on the premises and reads:

"Licensees are at all times responsible for the conduct of their business and are at all times directly responsible for any act or conduct of any employee on the premises which is in violation of the Intoxicating Liquor Laws or the Nonintoxicating Beer Laws or the Regulations of the Supervisor of Liquor Control."

Section 4889, Mo. R.S.A., vests in the Supervisor of Liquor Control authority to make certain regulations, however this does not include the adoption of a regulation fixing punishments or penalties, and for violation of which he may suspend or revoke a license. Said provision concludes in the following language:

"\* \* \* and to make such other rules and regulations as are necessary and feasible for carrying out the provisions of this act, as are not inconsistent with this act."

To promulgate and adopt a regulation, authorizing an automatic revocation of a license for the violation of one of the supervisors own regulations by an employee of a licensee, would be inconsistent with the Liquor Control Act, for the reason that said act as shown herein only authorizes an automatic revocation when the licensee himself is convicted for violating any provision of the Liquor Control Act and no where refers to an automatic revocation for the conviction of an employee of said licensee. Section 4889 supra reads:

"The supervisor of liquor control shall have the authority to suspend or revoke for cause all such licenses; and to make the following regulations (without limiting the generality of provisions empowering the supervisor of liquor control as in this act set forth) as to the following matters, acts and things; fix and determine the nature, form and capacity of all packages used for containing intoxicating liquor of any kind, to be kept or sold under this act; prescribe an official seal and label and determine the manner in which such seal or label shall be attached to every package of intoxicating liquor so sold under this act; this includes prescribing different official seals or different labels for the different classes, varieties or brands of intoxicating liquor; prescribe all forms, applications and licenses and such other forms as are necessary to carry out the provisions of this act; prescribe the terms and conditions of the licenses issued and granted under this act; prescribe the nature of the proof to be furnished and conditions to be observed in the issuance of duplicate licenses, in lieu of those lost or destroyed; establish rules and regulations for the conduct of the business carried on by each specific licensee under the license, and such rules and regulations if not obeyed by every licensee shall be grounds for the revocation or suspension of the license; the right to examine books, records and papers of each licensee and to hear and determine complaints against any licensee; to issue subpoenas and all necessary processes and require the production of papers, to administer oaths and to take testimony; prescribe all forms of labels to be affixed to all packages containing intoxicating liquor of any kind; and to make such other rules and regulations as are necessary and feasible for carrying out the provisions of this act, as are not inconsistent with this act."

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The Liquor Control Act however does provide that no licensee shall employ anyone who has been convicted since the ratification of the 21st Amendment of the Constitution of the United States of a violation of any law applicable to the manufacture or sale of intoxicating liquor (See Section 4906, Mo. R.S.A.) however that does not have the effect of automatically revoking the permit of the licensee for a subsequent conviction of an employee for violation of the Liquor Control Act.

Section 31, Article 1, Bill of Rights, Constitution of Missouri 1945, prohibits even the Legislature from vesting such authority in the supervisor of Liquor Control or any commission, bureau, board or agency of the state by the adoption of a regulation fixing a fine or punishment. Section 31 supra reads:

"That no law shall delegate to any commission, bureau, board or other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation."

In Volume 12, Corpus Juris, Section 338, page 852, we find the following principle of law which reads:

"As a general rule, the legislature may not delegate to a commission the power to prescribe a penalty. It may, however, authorize a railroad commission to prescribe duties on which a statute imposing a penalty may operate, \* \* \*"

Also see Section 333 of the same volume Corpus Juris, page 848 which reads:

"It is the function of the legislature, as a part of its police power, to make laws for the protection of the public health, and this power may not be delegated to an officer or board. The legislature, however, having enacted such laws in general terms, may confer on a board of health the duty of enforcing them, and to that end may give it authority to make reasonable rules and regulations which shall have the effect of law. The board may not itself prescribe a penalty for the violation of its regulations, but it is competent for the legislature to prescribe a penalty for the violation of rules and regulations thereafter made by the board."

See also State of Florida v. Atlantic Coastline Railroad Company, 32, L.R.A. (N.S.) 1.c. 638.

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In *Campbell v. Galeno Chemical Company* 74, Lawyers Edition 1063, l.c. 1069 and 1070, the court held that the power of the commission to make regulations, was not to authorize regulations providing for revocation of existing liquor permits in violation of express statutory provisions and in so holding the court said:

"The limits of the power to issue regulations are well settled. *International R. Co. v. Davidson*, 257 U. S. 506, 514, 66 L. ed. 341, 343, 42 Sup. Ct. Rep. They may not extend a statute or modify its provisions.\* \* \*"

#### CONCLUSION

Therefore, it is the opinion of this department that a conviction of an employee of a licensee under the Liquor Control Act, does not of itself constitute an automatic revocation of his employers permit under said Liquor Control Act, however, if the employer continues his employment subsequent to said conviction it is grounds for the Supervisor of Liquor Control revoking said employers license after issuing a citation, giving due notice of a hearing and giving said licensee an opportunity to appear at said hearing and show cause why his permit should not be revoked.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED

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J. E. TAYLOR  
Attorney General

ARH:rm