

INTOXICATING LIQUOR:
NONINTOXICATING BEER:



1. Owners and operators of a cafe or club, who are not licensed to sell any kind of liquor, may permit the consumption of 3.2 beer upon premises of the cafe or club by any individual at any time.

2. Owners and operators of a cafe or club, who are not licensed to sell any kind of liquor, may permit the consumption of intoxicating liquor upon their premises except between the hours of 10 p.m. and 6 a.m.

April 11, 1952

Honorable Bill Davenport
Prosecuting Attorney
Christian County
Ozark, Missouri

4-11-52

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"I would now like to make request for an opinion as to whether it is a violation of the law for persons to bring either 3.2 or higher percentage beer into a place not licensed to sell any kind of liquor but operating a cafe and club of sorts. This is in connection with a certain place in my County in which the license to sell 3.2 beer has been revoked by the Liquor Department for a conviction of a violation of the Liquor Control Act and where no other license has been obtained by any other person for the premises."

In your letter you refer to "3.2 or higher percentage beer." We would here point out that 3.2 beer is by Missouri law declared to be nonintoxicating. Paragraph 2 of Section 312.010, RSMo 1949, states:

"The phrase 'nonintoxicating beer' as used in this chapter shall be construed to refer to and to mean any beer manufactured from pure hops or pure extract of hops, and pure barley malt or other wholesome grains or cereals, and wholesome yeast, and pure water,

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and free from all harmful substances, preservatives and adulterants, and having an alcoholic content of more than one-half of one per cent by volume and not exceeding three and two-tenths per cent by weight."

We would further point out that Missouri law holds that any liquor which contains more than 3.2 per cent of alcohol by weight is intoxicating liquor. Section 311.020, RSMo 1949, states:

"The term 'intoxicating liquor' as used in this chapter, shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of three and two-tenths per cent of alcohol by weight."

We will first address ourselves to that part of your question which relates to 3.2 beer. Missouri law (Section 312.030, RSMo 1949) prohibits any person from selling 3.2 beer who has not received a permit to do so. Missouri law (Section 312.400, RSMo 1949) also prohibits any person, even though duly licensed, to sell or supply 3.2 beer to an habitual drunkard, a person who is intoxicated, or to a person under 21 years of age. However, these laws are not applicable to the situation which you present. The "cafe or club" to which you refer would, according to your statement, have nothing whatever to do with the 3.2 beer except to permit individuals who, presumptively, have lawfully acquired it, to consume such beer on the premises of the "cafe or club." We are unable to find anything in Missouri law which would prohibit an individual from allowing it to be done.

We will now consider the matter of a "cafe or club" permitting the consumption on its premises of beer which has a higher percentage of alcohol by weight than 3.2 per cent, which is to say, intoxicating liquor. Paragraph 1 of Section 311.480, RSMo 1949, states:

"It shall be unlawful for any person operating any premises where food, beverages or entertainment are sold or provided for

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compensation, who does not possess a license for the sale of intoxicating liquor, to permit the drinking or consumption of intoxicating liquor in, on or about said premises between ten P.M. and six A.M. the following day, without having a license as in this section provided."

Here, we would point out that the quoted portion of Section 311.480 covers and embraces the type of "cafe or club" which you describe to us, to-wit, a place which furnishes food or entertainment or both, but which does not possess a license to sell intoxicating liquor. We would point out further that since the above quoted portion of Section 311.480 only prohibits the consumption of intoxicating liquor upon the premises between the hours of 10 p.m. and 6 a.m., that such consumption between the hours of 6 a.m. and 10 p.m. is not prohibited and is therefore legal.

CONCLUSION

It, therefore, is the opinion of this department that:

1. The owners and operators of a cafe or club, who are not licensed to sell any kind of liquor, may permit the consumption of 3.2 beer upon premises of the cafe or club by any individual at any time.
2. Owners and operators of a cafe or club who are not licensed to sell any kind of liquor, may permit the consumption of intoxicating liquor upon their premises except between the hours of 10 p.m. and 6 a.m.

Respectfully submitted,

HUGH P. WILLIAMSON
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APPROVED:



J. E. TAYLOR
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