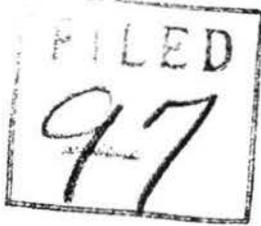


made by supervisor of liquor control or by court under appropriate circumstances.

July 6, 1953



Honorable Homer F. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Mr. Williams:

Reference is made to your recent request for an official opinion from this department, which reads:

"Some of the agents of the supervisor of liquor control of the state have notified certain tavern owners not to sell beers or liquors to certain named parties, which parties these agents name as habitual drunkards.

"Do these employees of the Liquor Control have the right to make determinations of who are habitual drunkards, and if so by virtue of what section of the law?"

The sale of intoxicating liquors to persons who are habitual drunkards is prohibited and made a criminal offense under the provisions of Section 311.310, RSMo 1949, which reads as follows:

"Any licensee under this chapter, or his employee, who shall sell, vend, give away or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one years, or to any person intoxicated or appearing to be in a state of intoxication, or to a habitual drunkard, and any person whomsoever except his or her parent or guardian who shall procure for, sell, give away or otherwise supply

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intoxicating liquor to any person under the age of twenty-one years, or to any intoxicated person or any person appearing to be in a state of intoxication, or to a habitual drunkard, shall be deemed guilty of a misdemeanor; provided, however, that this section shall not apply to the supplying of intoxicating liquor to a person under the age of twenty-one years for medical purposes only, or to the administering of said intoxicating liquor to any person by a duly licensed physician."

(Underscoring ours.)

The conviction of such criminal offense amounts to an automatic revocation of the license of the offending person under the provisions of Section 311.720, RSMo 1949. In addition complaints based upon such sales may be brought directly in the circuit court in which the licenses premises are located by either the sheriff or other peace officer of such county or by any eight or more taxpaying citizens. Such procedure is authorized under paragraph (1) of Section 311.710.

We have examined cases previously decided by the appellate courts of this state, particularly those under a now repealed act imposing penalties upon dramshop keepers who sold intoxicating liquor to persons who were "habitual drunkards" after notice by designated members of the family of such persons to not do so. In Jackson County v. Schmid et al., 124 S.W. 1074, the court quoted approvingly from Page v. Page, 43 Wash. 293, the following definition of "habitual drunkard":

" * * * 'To be an habitual drunkard a person does not have to be drunk all the time, nor necessarily incapacitated from pursuing, during the working hours of the day, ordinary unskilled manual labor. One is an habitual drunkard, in the meaning of the divorce laws, who has a fixed habit of frequently getting drunk. It is not necessary that he be constantly or universally drunk, nor that he have more drunken than sober hours. It is enough that he have the habit so firmly fixed upon him that he becomes drunk

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with recurring frequency periodically,
or that he is unable to resist when the
opportunity and temptation is presented."

This definition was further approved in 180 S.W. 419 in the
case of Lester v. Sampson.

We have searched the statutes relating to the enforcement
of the liquor control laws of this state and the regulations
promulgated by the supervisor of liquor control and do not
find that any authority has been delegated or purportedly
delegated to the agents of that department to make a deter-
mination as to whether or not a particular person is or is
not an "habitual drunkard". On the contrary it is our
thought that such determination is a factual matter to be
determined by the supervisor of liquor control or by a
court in appropriate proceedings based upon an alleged
violation of Section 311.310, cited supra.

As a practical matter, however, we do wish to point out
that if information is given the holder of a license that a
particular person is an "habitual drunkard", and that without
regard to the source of such information, it is certainly
sufficient to put such holder of a license on notice that a
question exists as to the right of such person to purchase
intoxicating liquor. If such holder of a license thereafter
should sell intoxicating liquor to such a designated person
and it be later determined that such a person in fact is an
"habitual drunkard", the penalties consequent upon such sale
would necessarily have to be shown by the holder of the
license.

CONCLUSION.

In the premises we are of the opinion that agents of
the department of liquor control, as such, have no authority
to determine whether or not a particular person is or is not
an "habitual drunkard", but that such determination is a
factual matter to be determined in appropriate proceedings
by either the supervisor of liquor control or a court.

The foregoing opinion, which I hereby approve, was
prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General