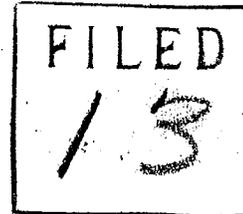


LIQUOR CONTROL ACT:  
INTOXICATING BEER  
LICENSE:

A person who, on or since December 5, 1933, has been convicted of a violation of any law applicable to the manufacture or sale of intoxicating liquor, which includes 5% or intoxicating beer, cannot legally be granted by the supervisor of liquor control and license to sell intoxicating liquor or 5% or intoxicating beer; a person so convicted prior to December 5, 1933, is not debarred from securing such a license if he be found to possess the other necessary qualifications; a person convicted of the violation of a law not related to the manufacture or sale of intoxicating liquor or 5% or intoxicating beer, is not debarred from obtaining a liquor license if he possesses other necessary qualifications.

February 5, 1954

Honorable C. M. Buford  
Prosecuting Attorney  
Reynolds County,  
Ellington, Missouri



Dear Mr. Buford:

Your recent request for an official opinion reads as follows:

"Has the liquor control board the authority to issue a beer license to a person who has been convicted of a misdemeanor?"

We assume that, when you use the word "beer" above, you refer to 5% beer, which the law declares to be intoxicating, and not to 3.2 beer, which is declared by law to be non-intoxicating, since the word "beer", without the word "non-intoxicating", commonly means 5% or intoxicating beer.

In your request you do not state whether the conviction for a misdemeanor was for a violation of the liquor law, or for the violation of some other law not related to the liquor law, hence we shall consider both situations. In an opinion rendered by this department on May 26, 1941, to Honorable C. Roy Noel, Supervisor Department of Liquor Control of Missouri, a copy of which opinion is enclosed, this department held that a license to sell intoxicating liquor, which includes 5% or intoxicating beer, may not be issued to a person who has been convicted, since the ratification of the 21st amendment to the Constitution of the United States, of a violation of any law applicable to the manufacture or sale of intoxicating liquor.

We here note that in the case of *Wilson v. Burke*, 202 S.W.(2d) 876, at l.c. 877, the Missouri Supreme Court in its opinion fixed the date of the ratification of the 21st amendment as being December 5, 1933. Since the statute, paragraph 1, Section 311.060 RSMo

Honorable C. M. Buford

1949, simply uses the words "convicted \* \* \* of a violation \* \* \* of any law applicable to the manufacture or sale of intoxicating liquor \* \* \*", we assume that by the word "convicted" is meant "convicted of either a misdemeanor or a felony". In this regard we also note that in the case of Wilson v. Burke, supra, the court in its opinion held that where the legislature directed that no person be granted a liquor license who had been "convicted" of violating any law relating to the manufacture or sale of intoxicating liquor that (at l.c. 878): "The legislature has the right to ignore the manner in which the conviction was reached, whether upon trial, upon plea of guilty or nolo contendere". Therefore, it is the opinion of this department that any person, convicted of the violation of the provisions of any law relating to the manufacture or sale of intoxicating liquor, which would include 5% or intoxicating beer, on or after December 5, 1933, whether such a conviction was for a misdemeanor or a felony, cannot legally be issued a license by the supervisor of liquor control of Missouri to manufacture or sell intoxicating liquor, which would include 5% or intoxicating beer. By implication we deduce that a conviction for the violation of any law applicable to the manufacture or sale of intoxicating liquor, which conviction was prior to December 5, 1933, would not, of itself, effect such a disqualification to receive a license from the supervisor of liquor control to sell intoxicating liquor, which includes 5% or intoxicating beer. Let us now consider the effect upon the applicant for a license to sell intoxicating liquor or 5% or intoxicating beer of a conviction for the violation of a law not related to the law regarding the manufacture or sale of intoxicating liquor or 5% or intoxicating beer.

In an opinion rendered by this department on December 31, 1938, to Honorable E. J. McMahon, Supervisor of Liquor Control, a copy of which opinion is enclosed, this department held that "conviction for violation of laws other than liquor laws does not result in automatic revocation of liquor license." From this holding, that conviction for violation of a law other than the liquor law did not effect an automatic revocation of the liquor license, it would seem to follow that such a conviction would not, of itself, act as a bar to a person who was so convicted being granted a license by the Supervisor of Liquor Control to sell intoxicating liquor or 5% or intoxicating beer. This we believe to be a correct statement of the law.

The above discussion relates to automatic revocations of licenses and automatic bars to the procuring of a new license by a person previously convicted of a violation of the liquor laws. We may point out that Section 311.060 RSMo 1949, states that "No person shall be granted a license hereunder unless such person is of good moral character\* \* \*."

Honorable C. M. Buford

Whether a person convicted, prior to December 5, 1933, for a violation of the liquor laws, or whether a person convicted at any time for the violation of any law not related to the liquor law, could under any circumstances be considered to be "a person of good moral character" would, we believe, be a matter to be determined at the discretion of the supervisor of liquor control. At least such a conviction would not, we believe, automatically debar a person from getting a license on the ground that he was not "of good moral character".

#### CONCLUSION

It is the opinion of this department that a person who, on or since December 5, 1933, has been convicted of a violation of any law applicable to the manufacture or sale of intoxicating liquor, which includes 5% or intoxicating beer, cannot legally be granted, by the supervisor of liquor control, a license to sell intoxicating liquor or 5% or intoxicating beer; a person convicted prior to December 5, 1933, of a misdemeanor relating to the manufacture or sale of intoxicating liquor is not debarred from securing such a license if he be found to possess the other necessary qualifications; a person convicted of a misdemeanor not related to the manufacture or sale of intoxicating liquor or 5% or intoxicating beer is not debarred from obtaining a liquor license if he possesses the other necessary qualifications.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General

HPW/ld