

LIQUOR: An illegal sale of intoxicating liquor to a minor by
LICENSEE: an agent with the knowledge and consent of the licensee
LIABILITY: renders the licensee as well as the agent liable.

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October 15, 1956

Honorable William J. Geekie
Prosecuting Attorney
City of St. Louis
Municipal Courts Building
St. Louis, Missouri

Dear Mr. Geekie:

This is in reply to a request for an opinion of this office,
which request is as follows:

"I respectfully request the opinion of your
office as to the feasibility of 'Issuing an
Information' and obtaining a conviction from
the following set of facts:

"1. The Police Department of the City of
St. Louis makes an arrest in a liquor li-
censed establishment after observing an
agent or employee of the licensee sell,
give away, vend, or otherwise supply in-
toxicating liquor to a minor. While this
offense was taking place the licensee was
on the premises but in no way assisted or
participated in the offense. Only infor-
mation available was the fact that the
licensee was present at the time of the
sale. The agent or employee does make
the statement that the licensee has given
instructions not to sell to minors. Now
both the employee and the licensee are
'booked,' 'Sale of Liquor to Minors,'
Violation of State Statute Sec. 311.310,
and are released on bond. Question in
our mind is, under existing Missouri Law,
can the licensee be prosecuted and a con-
viction sustained?

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"2. Same set of facts but go a little farther. At the time of the offense the licensee is not even on the premises. At a later time and maybe at an even later date the licensee is arrested for violation of State Statute 311.310 and released on bond.

"Bonds are returnable in both enumerated instances and disposition must be made on the Application for an Information by this office.

"A research of the law by this office has not clearly resolved this question. This office has not been able to find any recent case law or existing State Statutes which make a Principal criminally liable for the acts of his agent committed without his knowledge or consent. This office has been following this General Rule of Law, 'that the Principal cannot be held criminally liable for the acts of his agent committed without his knowledge or consent.' This being a General Rule of Law, there may be specific instances under the liquor Statutes whereby the 'General Rule' does not apply. If so, please advise.

"Checking the origin of Section 311.310, R.S. Mo. 1949 back through the year 1889, we find that the Revised Statutes of Missouri in the year 1889 definitely established criminal liability on the part of a dramshop keeper for the sale of Intoxicating Liquor to a minor when the sale was made by the agent of the dramshop keeper. Case law on this section of the Statute is contained in State - vs - McCance, 110 Mo. 398, states that an indictment under this particular section only establishes a prima facie case, which may be rebutted by competent testimony.

"The law in effect in the year 1889 was definitely clear - a licensee could be indicted for the criminal acts of his agent. The State Statutes of the year 1889 were subsequently changed and the R.S. of Mo. 1919, Section 6527, state that the dramshop keeper shall not 'suffer' intoxicating liquor to be sold

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to a minor. Later years the Statute was changed and in 1939 R.S. No. Section 4885 we find that the wording was, 'No person or his employee shall sell or supply intoxicating liquor or permit same to be sold or supplied to a minor. Now, we come to our present governing Statute, Section 311.310 R.S. No. 1949, there is no reference to a licensee being criminally liable for the acts of his agent, no mention of the word suffer nor no mention of the words permit same.

"Considering the General Rule of Law, as stated above, and Section 311.310 Revised Statutes of Missouri 1949, or any other section of the State Statutes pertaining to the control of the sale of liquor, what is the opinion of your office as to problem #1 and #2 enumerated?"

We quote your entire letter herein as that portion of your letter which follows questions one and two practically answers your questions.

The statute to which you refer, Section 311.310 RSMo 1949, is in part 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, * * * shall be deemed guilty of a misdemeanor; provided, * * *"

The answers to your questions depend entirely upon whether or not the sale was made with the knowledge and consent of the licensee. We are, therefore, assuming, in addition to the facts stated in question No. 1, that the sale was made with the knowledge and consent of the licensee.

We find nothing in the present Missouri Liquor Law which takes this case out of the general rule of law as stated in your letter.

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The general rule of law is well stated in 48 C.J.S., p. 387, par. 271, which in part is as follows:

"Where a violation of the liquor laws, such as an illegal sale, is committed or made by an agent or servant, with the knowledge and consent of the principal or master, or in pursuance of his express command, or of a general authority to such agent or servant, the principal or master is criminally liable, even though he was not present at the time. * * *"

We call your attention to the case of *City of Columbia v. Jackson*, Mo.App., 227 SW 644, where the general rule is pronounced that an illegal sale by an agent with the knowledge and consent of the principal makes the principal as well as the agent liable. In this case, at l.c. 645[2], the Court said:

"[2,3] Aside from this last, however, we think there was a case made from which the jury could reasonably find, as they did, that Williams made the sale as agent and employee of the defendant and with his knowledge and consent, and that such sale was in law the defendant's act. And this issue of whether the liquor sold was defendant's property and the sale made with his authority was specifically included in the instructions submitting the case to the jury. * * *"

The prosecution in *City of Columbia v. Jackson*, supra, was for violation of a local option ordinance; however, the same principle of law applies to the facts stated and assumed herein.

Our answer to your questions one and two, with the additional assumed fact of "knowledge and consent" on the part of the licensee, is that a licensee could be prosecuted and a conviction sustained for the sale of intoxicating liquor to a minor.

CONCLUSION.

It is, therefore, the opinion of this office that an illegal sale of intoxicating liquor made to a minor by an agent with the

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knowledge and consent of the licensee renders the licensee as well as the agent liable.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Grover C. Huston.

Yours very truly,

John M. Dalton
Attorney General

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