

INTOXICATING LIQUORS: Railroad licensees must purchase from Missouri wholesalers and under price posting law.



March 12, 1956

Honorable William E. Hilsman  
Member of Missouri Senate  
Third District  
4206 Holly  
St. Louis, Missouri

Dear Senator Hilsman:

Your request for the opinion of this office reads as follows:

"On November 8th, 1955, Hon. Hollis M. Ketchum, Supervisor of the Department of Liquor Control, issued a bulletin or letter addressed to 'All Wholesalers, Distillers and Outstate Solicitors' and on the same date issued another document addressed to 'All Railroad Licensees in the State of Missouri'. Copies of these bulletins or letters are attached to this letter. Under Mr. Ketchum's interpretation of our law, every railroad doing business in Missouri must purchase intoxicating liquor bought for the purpose of resale from a Missouri wholesaler under price schedules posted pursuant to the provision of Senate Bill 231 enacted into law at the last session of the Missouri General Assembly.

"I ask your opinion on the following related matters:

"Assume that a railroad operates a commissary in the State of Missouri. This railroad contracts for the purchase of all intoxicating liquors used by it for resale to its passengers in a State other than Missouri. All retail sales by the railroad

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are in States other than Missouri, and no retail sales are made in Missouri. The intoxicating liquors purchased by the railroad for resale in States other than Missouri are sent to its commissary in Missouri, stored here, and loaded into its passenger trains in Missouri. Bearing in mind that the intoxicating liquors purchased by the railroad for resale at retail are merely stored in Missouri at its commissary, and remembering that no retail sale is made in Missouri, and that the purchase of such intoxicating liquor is made in a State other than Missouri, I ask that you advise me by official opinion whether this railroad must now purchase all of its intoxicating liquor in Missouri from Missouri wholesalers at prices posted under the provisions of Senate Bill 231."

The letters or directives, referred to in the request, by the Supervisor of the Department of Liquor Control, respectively, one to all wholesalers, distillers and outstate solicitors, and one to all railroads licensed in the State of Missouri, read as follows:

**"TO ALL WHOLESALERS, DISTILLERS AND  
OUTSTATE SOLICITORS:**

"It has come to my attention that railroads in some instances in the State of Missouri have been purchasing intoxicating liquors direct from distillers and outstate solicitors.

"I have advised the railroads licensed to do business in the State of Missouri that they are retail licenses in the State of Missouri and must purchase intoxicating liquor only from duly licensed wholesalers of this state, and further informed them they would have to purchase intoxicating liquor at the posted prices of the schedules in effect of the wholesaler they are purchasing from.

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"The Department of Liquor Control has, by regulation, prohibited miniatures to come into the State, however, an exception has been made for the railroads throughout the years. Since there is this one exception for railroads to purchase miniatures, it will be necessary for the wholesaler receiving an order for miniatures from railroads to request permission of the Department of Liquor Control to make such shipment.

"Enclosed please find copy of letter I have this day sent to all railroad licensees in the State of Missouri.

Very truly yours,

HOLLIS M. KETCHUM  
SUPERVISOR."

"TO ALL RAILROAD LICENSEES IN THE STATE OF MISSOURI.

"It has come to my attention that in some instances railroad licensees of this State have been making purchases of intoxicating liquor direct from distillers and outstate solicitors. This is to advise that according to Section 311.200, railroad licensees are defined as being retail licensees in the State of Missouri. Being a retail licensee, you are permitted only to purchase intoxicating liquor from duly licensed liquor and wine wholesale licensees of this State and since August 29, 1955, the effective date of Sections 311.331, 311.332 and 311.333 (Senate Bill 231), you will be required to purchase from Missouri wholesalers at their posted prices of the schedules in effect.

"The Department of Liquor Control by regulation prohibits miniatures, however, an exception has been made for railroads. Railroads have also been permitted to purchase miniatures without Missouri Excise or Inspection Stamps affixed thereto. This

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exception of miniatures being shipped to you without the Excise of Inspection Stamps affixed does not apply to any other size of liquor container other than miniatures. When purchasing any other size liquor containers from Missouri Wholesalers, the Excise and Inspection Stamps must be affixed. With the exception of miniatures you are not permitted to bring intoxicating liquor into the State of Missouri from other states or by any other method without the containers having affixed thereto the Missouri Excise and Inspection stamps.

Very truly yours,  
Hollis M. Ketchum  
Supervisor."

Inasmuch as the railroad concerning which you have inquired apparently received a copy of the directive of the Supervisor of Liquor Control addressed to "All Railroad Licensees in the State of Missouri," we must presume that the railroad is the holder of a retail license issued under the authority of Section 311.200, RSMo 1949. Were such not the case, the railroad would not be concerned with the directive.

Section 311.280, RSMo 1949, provides:

"It shall be unlawful for any person in this state holding a retail liquor license to purchase any intoxicating liquor except from, by or through a duly licensed wholesale liquor dealer in this state. It shall be unlawful for such retail liquor dealer to sell or offer for sale any intoxicating liquor purchased in violation of the provisions of this section. Any person violating any provision of this section shall be deemed guilty of a misdemeanor."

Inasmuch as the railroad concerned is the holder of a retail liquor license, its purchases from wholesalers are subject to the provisions of the above-quoted section. This section does not take into account subsequent disposition of the liquor by the retail licensee. Its obvious purpose is to regulate delivery to licensees in the state of Missouri and to make certain that intoxicating liquors delivered to licensees within the state of

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Missouri have been properly stamped and the inspection fees imposed under the Missouri law paid thereon.

Inasmuch as the Legislature has expressly required in Section 311.280, supra, that Missouri retail licensees purchase only from, by or through Missouri licensed wholesalers, and makes no exception applicable to a railroad which might actually sell liquor received by it in Missouri in another state, we are unable to interpose any such exception. If such exception is to be provided, it appears to us to be a matter for the Legislature.

Inasmuch as the railroad licensees are required, under Section 311.280, supra, to purchase from Missouri wholesalers only, the application of Senate Bill No. 231, referred to in your opinion request, must automatically follow. That bill prohibits sales by wholesalers in Missouri except in accordance with that act. No exception is made with respect to transactions between wholesalers and any particular class of licensees insofar as the requirements of Senate Bill No. 231 are concerned. Therefore, inasmuch as railroad licensees must purchase from licensed Missouri wholesalers only, who must in turn comply with the requirements of Senate Bill No. 231, it follows that the railroad licensee must purchase at prices posted under the provisions of Senate Bill No. 231.

#### CONCLUSION

Therefore, it is the opinion of this office that a railroad which operates a commissary in the state of Missouri and which holds a license issued by the Department of Liquor Control for the sale of intoxicating liquor at retail is required to purchase its intoxicating liquor delivered in Missouri from, by or through Missouri licensed wholesalers at prices posted under the provisions of Senate Bill No. 231 of the 68th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

RRW:ml