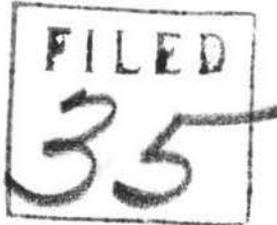


"CONVICTED" DEFINED:
LIQUOR LAW:

The word "convicted" as used in numbered paragraph 2 of Section 312.510, RSMo 1949, includes within its meaning a plea of guilty, as does a trial before the court which results in a finding of guilt.

June 17, 1957



Honorable Peter J. Grewach
Prosecuting Attorney
Lincoln County
Troy, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Subparagraph 2 of Section 312.510 of the Revised Statutes calls for a revocation of a license upon conviction of any offenses outlined in the Chapter. Subparagraph 3 of the same section sets forth the procedure to be followed if by final judgment the permittee is acquitted of the charge.

"It appears to me that it was the intent of the legislature that the word conviction used in Paragraph 2 should be construed as a finding of guilt by the jury.

"Will you please furnish your opinion of the meaning of this terminology."

The single point which is raised in your above request, as we view it, is whether the word "convicted" as used in paragraph 2 of Section 312.510 of the Revised Statutes of Missouri, 1949, means conviction by a jury only or whether it also embraces a plea of guilty, and a judgment of conviction by the court following such plea.

In this regard we direct your attention to the case of *Wilson v. Burke*, 202 S.W. 2d 876. At l.c. 878 of its opinion, the Missouri Supreme Court stated:

"The contentions made by respondent and the discussion in the brief and in the cases cited by respondent respecting the historicity and limitations of the nolo contendere plea are interesting. But they cannot avail respondent

here. The statute, Section 4906, stands between respondent and the license for which he applied. The legislature has the right to determine what may deprive an applicant of the right to receive a license to sell liquor. Such right is one of the prerogatives of the legislative branch of the government. The legislature has the right to ignore the manner in which the conviction was reached, whether upon trial, upon plea of guilty or plea of nolo contendere. Upon this very point this Court has heretofore ruled in *Neibling v. Terry*, 352 Mo. 396, 177 S.W. 2d 502, 503, 152 A.L.R. 249, wherein, in a disbarment action against Terry, it was contended that because Terry had pleaded nolo contendere to a charge of using the mails to defraud that the judgment of conviction upon such plea could not be used as the basis of disbarment action there upon appeal. In that case the statute, R.S.Mo. 1939, Sec. 13333, Mo.R.S.A., stated that 'a conviction for any criminal offense involving moral turpitude' authorized disbarment. The decision of the question before us in that case turned on the effect of a nolo contendere plea upon which the judgment of conviction was there based. In ruling that 'Terry's conviction on his plea of nolo contendere' was 'sufficient to authorize his disbarment under our statute', we discussed the meaning of the word 'convicted' as used in a disability statute, and said, in part (352 Mo. loc. cit. 398, 177 S.W. 2d loc. cit. 504, 152 A.L.R. 249): 'By statute, in certain instances, a judgment of conviction has been given force because of the fact of its rendition. In such instances the judgment of conviction is made a basis for enforcing a statutory disability. Such statutes in no wise authorize the use of a conviction as an admission to be used to establish liability in a civil suit. Nor do the statutes make any distinction in convictions according to the nature of the plea resulting in such convictions. Nor is there any logical reason for a distinction. For statutory purposes a conviction on a plea of not guilty carries the same force as one entered on a plea of guilty.' We squarely ruled in Terry's case, as we do here, that the statute, being a disability statute, and failing to note any distinction or exceptions in judgments of conviction 'according to the nature of the plea resulting in such convictions' that we are without any au-

Honorable Peter J. Grewach

thority to write any exception whatever into the statute. Such is a legislative function. The legislature wrote the statute. Our function is limited to its interpretation. We can write neither the statute nor our philosophy with respect to how we may believe the legislature should have written the statute. State v. Kennedy, 343 Mo. 786, 794, 123 S.W. 2d 118. * * *."

In the case of Meyer v. Missouri Real Estate Commission, 183 S.W. 2d 342, at l.c. 345, the Kansas City Court of Appeals stated:

"We are of the opinion that the word 'conviction', as used in the Missouri Real Estate Commission Act, should be taken in its most comprehensive sense, that is, to include the judgment of the court upon a verdict or confession of guilt. * * *."

An almost unlimited number of other cases of the same import as the two Missouri cases discussed above, from foreign jurisdictions, could be adduced in support of the Missouri law stated above. We note the following: State v. Staples, 124 Atl. 2d. 187; Huff v. Anderson, 90 S.E. 2d 329; State v. Compton, 100 Atl. 2d 304; Bubar v. Dizdar, 60 N.W. 2d 77; People v. Dail, 140 Pac. 2d 828. We will further state that trial before the court, resulting in a finding of guilt, is also a "conviction" within the meaning of Section 312.510.

CONCLUSION

It is the opinion of this department that the word "convicted" as used in numbered paragraph 2 of Section 312.510, RSMo 1949, includes within its meaning a plea of guilty, as does a trial before the court which results in a finding of guilt.

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

Yours very truly,

John M. Dalton
Attorney General

HPW/lc/b1