

CRIMINAL LAW: The disorderly condition and the drunken
MISDEMEANOR: or intoxicated condition of a defendant
DRUNKENNESS: must both be plead and proven for a
INTOXICATION: prosecution and conviction under Section
DISORDERLY: 562.260, RSMo 1961, Cumulative Supplement.
STATUTES:

OPINION No.186
[1962]

May 24, 1962

Honorable Harold L. Henry
Prosecuting Attorney
Howell County
Post Office Box 592
West Plains, Missouri

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Dear Mr. Henry:

This is in reply to your opinion request of April 20, 1962, in which you state:

"I would like to request an interpretation of the 'public drunkenness statute', Section 562.260, R.S.Mo., 1961. The part of the statute that I would like to have interpreted is the words, 'in a drunken or intoxicated and disorderly condition', appearing in paragraph two of the statute. The specific question is whether or not a person can be charged and convicted for being in a drunken condition in a public place without also alleging and proving that the party was in a disorderly condition."

Section 562.260, RSMo 1961, Cumulative Supplement (H.B. 155) states:

"1. It shall be unlawful for any person in this state to enter any schoolhouse or church house in which there is an assemblage of people, met for a lawful purpose, or any courthouse, in a drunken or intoxicated and disorderly condition,

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or to drink or offer to drink any intoxicating liquors in the presence of such assembly of people, or in any courthouse within this state and any person or persons so doing shall be guilty of a misdemeanor. (underlining supplied)

"2. It shall be unlawful for any person in this state to attend or be in any other public place, in a drunken or intoxicated and disorderly condition, and any person or persons so doing shall be guilty of a misdemeanor. As used in this section, the term 'public place' includes but is not limited to any common carrier, building, street, lane, park, or place of public resort, recreation or amusement other than a privately owned and operated business establishment." (underlining supplied)

Said section employs the phrase "in a drunken or intoxicated and disorderly condition."

However, Section 562.260, RSMo 1959, which was repealed by Section 562.260, RSMo 1961, Cumulative Supplement, merely used the phrase "in a drunken or intoxicated condition."

In discussing the use of the words "or" and "and" in the law, the following statement is found in 3 C.J.S., page 1068:

"Ordinarily the words 'and' and 'or', are in no sense interchangeable terms, but, on the contrary, are used in the structure of language for purposes entirely variant, the former being strictly of a conjunctive, the latter of a disjunctive nature. Never-

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theless, in order to effectuate the intention of the parties to an instrument, a testator, or a legislature, as the case may be, the word 'and' is sometimes construed to mean 'or'. This construction, however, is never resorted to except for strong reasons and the words should never be so construed unless the context favors the conversion;
- - - -"

Due to the foregoing language, it becomes necessary to ascertain if the Legislature's intention was to use the word "and" in its conjunctive rather than disjunctive sense.

If used in the conjunctive in Section 562.260, RSMo 1961, Cumulative Supplement, the Legislature, in effect, added an additional element to this particular misdemeanor, thus necessitating the pleading and proving not only of intoxication or drunkenness, but in addition the element of disorderly condition in order to convict one under this particular section.

The original and perfected House Bill No. 155 of the 71st General Assembly contained only the phrase "in a drunken or intoxicated condition."

However, the Senate Committee Substitute for House Bill No. 155, which was passed, added the words "and disorderly" to the above phrase.

It is, therefore, clear that the Legislature by specifically adding the phrase "and disorderly condition" to the phrase "in a drunken or intoxicated condition" as it had appeared in Section 562.260, RSMo 1959, prior to its repeal, did not intend "disorderly condition" to be synonymous with "drunken or intoxicated condition," but consciously and intentionally added the additional element of "disorderly condition" to this particular misdemeanor, and indicated such by using the word "and" in the conjunctive sense.

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CONCLUSION

Pursuant to the language employed in Section 562.260, RSMo 1961, Cumulative Supplement, it is necessary to plead and prove not only that defendant was "in a drunken or intoxicated" condition, but he was also in a "disorderly" condition in order to obtain a misdemeanor conviction under said section.

The foregoing opinion, which I hereby approve, was prepared by my assistant George W. Draper, II.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GWD lc