

(Opinion #143 answered by letter)  
Stephan

March 14, 1963



Honorable Don E. Burrell  
Prosecuting Attorney  
Greene County  
Springfield, Missouri

Dear Mr. Burrell:

The Missouri Supreme Court in its Harvey opinion (copy enclosed) wrote as follows:

"In the light of the history and background of these sections, and taking judicial notice of the matters hereinabove mentioned, upon what we deem to be an objective reappraisal of our views as formerly expressed, we have concluded, and accordingly hold that the presence of the phrase 'or other articles of immediate necessity' renders the statutory scheme of Sunday closing (as embodied within the two sections here under scrutiny) so vague and indefinite that it cannot be ascertained with any reasonable degree of certainty what sales are permitted, and what sales are interdicted, thus making the statute incapable of rational enforcement, and hence void." (Emphasis ours.)

A 3.2 beer case is docketed for argument on April 23, 1963 (State of Missouri v. Gilbert Smith, #49531). In this case appellant contests the applicability of Secs. 563.720 and 563.730 to the sale of 3.2 beer on Sunday. It is expected that the appellant will file a motion to reverse the judgment of conviction based on the Harvey decision; and, if the court grants such a motion, then of course that will finally close the door on this matter insofar as Secs. 563.720 and 563.730 are concerned.

Yours very truly

Albert J. Stephan, Jr.  
Assistant Attorney General

enc.