

EFFECTIVE DATE OF LAWS:
LAWS - EFFECTIVE DATE:
SUNDAY CLOSING:
BLUE LAW:
NUISANCE:
STATUTES:
CRIMINAL LAW:

- (1) Effective date of new Sunday Closing law is Oct. 13, 1963 and there exists no reason why it should not be enforced as of that date
- (2) In addition to criminal sanctions imposed by the law, a prosecuting attorney has the authority to seek a civil injunction to enjoin illegal Sunday selling as a public and common nuisance.
- (3) A private party may sue to abate such nuisance if he has suffered some peculiar or special injury not common to the general public.

August 13, 1963

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OPINION NO. 335

Honorable Daniel V. O'Brien
Prosecuting Attorney
St. Louis County
Courthouse
Forsyth and Central Boulevards
Clayton 5, Missouri



Dear Mr. O'Brien:

You have requested an opinion with respect to Senate Bill No. 49 as finally enacted (the Sunday Closing law):

- (1) As to whether there is any reason why said law should not be enforced on and after October 13, 1963, the effective date; and
- (2) As to what civil remedies, if any, Section 1(4) of the Act makes available to prosecuting attorneys or aggrieved private parties.

In response to your first question, the effective date of the Sunday Closing law is October 13, 1963, ninety days after the adjournment of the General Assembly on July 15, 1963 (Missouri Constitution of 1945, Article III, Section 29, and Section 1.130, RSMo 1959). There is not only no reason why the law should not be enforced on and after such date, but it would appear to be the duty of the officials charged with enforcement of the laws of the State of Missouri to do so. Indeed, in a case filed against you in the Circuit Court of St. Louis County as a test of the validity of the law, Circuit Judge Schaaf held it to be constitutional (GEM, INC., et al. v. O'BRIEN).

Concerning your second inquiry, in addition to criminal proscriptions provided by Section 1(1) of the law, Section 1(4) thereof makes its violation a public and common nuisance.

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The courts of Missouri have, without exception, held it to be permissible for the Legislature to declare an act a public nuisance, in addition to proscribing such act as a crime. In *State v. Tower*, 185 Mo. 79, 84 SW 10 (1904), the court found:

"The power of the General Assembly to pass all needful laws except when restricted by the State or Federal Constitution is plenary, and the Legislature has the power to declare places or practices to the detriment of public interests or to the injury of the health, morals or welfare of the community, public nuisances, although not such at common law. The General Assembly in the exercise of the police power may declare that a nuisance which before was not a nuisance.

"Such an act is properly within that power which is conferred by the Constitution of this State upon the General Assembly in the distribution of the powers of our State government. [*Lawton v. Steele*, 119 N.Y. 226; *Mugler v. Kansas*, 123 U.S. 623; *Mathews v. Railroad*, 121 Mo. 298; *Moses v. United States*, 50 L.R.A. 532.]

"Because at common law smoke was not a nuisance per se is no reason why the people of this State, through their representatives in the legislative department, may not change that law, and make it a nuisance per se when the location and surrounding circumstances in their opinion and judgment require it. The General Assembly may adopt new regulations from time to time as the occasion and necessity may require. The State has no higher function than the duty to provide for the safety and comfort of its citizens."

It is the duty of the prosecuting attorney or other officials charged with law enforcement to bring suit, in the name and at the relation of the State, to enjoin the commission of such public nuisance. *State ex rel. Thrash v. Lamb*, 237 Mo. 437, 141 SW 665 (1911).

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In State ex rel. Lamm v. Sedalia, 241 SW 656 (K.C. Ct. of App. 1922), the court, citing Thrash, supra, stated:

"The prosecuting attorney can properly represent the public in the bringing of a suit to restrain a public nuisance within his jurisdiction, for he has powers analogous to those exercised by the Attorney General of England. * * * and a court of equity has jurisdiction to restrain a public nuisance by injunction at the suit of the state or some proper officer representing the state."

Further, a private party may sue to abate such nuisance if he has suffered some peculiar or special injury not common to the general public; that is, different in kind rather than degree from the public injury. Cummings Realty & Investment Co. v. Deere & Co., 208 Mo. 66, 106 SW 495 (1907). In Christy v. C. B. & Q. R.R. Co., 240 Mo. App. 632, 212 SW2d 476 (K.C. Ct. of App. 1948), the court, citing Cummings, supra, stated:

"In order to maintain an action for the nuisance it is not enough for the property owner to show that his injury is merely greater in degree than that suffered by the general public. His damage must be different in kind."

Again, in Missouri Veterinary Medical Assn. v. Glisan, 230 SW2d 169 (St. Louis Ct. of App. 1950), the court cites both the foregoing cases in support of the proposition that:

"A public nuisance cannot be restrained by a suit of an individual suffering no special injury from it."

Of interest in determining what constitutes a sufficient special interest are the cases of Clutter v. Blankenship, 346 Mo. 961, 144 SW2d 119 (1940), and Biggs v. Griffith, 231 SW2d 875 (Springfield Ct. of App. 1950).

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CONCLUSION

(1) The effective date of the new Sunday Closing law is October 13, 1963 and there exists no reason why it should not be enforced as of that date.

(2) In addition to the criminal sanctions imposed by the law, a prosecuting attorney has the authority to seek a civil injunction to enjoin illegal Sunday selling as a public and common nuisance.

(3) A private party may sue to abate such nuisance if he has suffered some peculiar or special injury not common to the general public.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JGS:ml