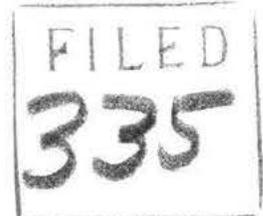


October 7, 1965



Mr. Glennon T. Moran, Supervisor  
Department of Liquor Control  
State of Missouri  
Jefferson City, Missouri 65102

Dear Mr. Moran:

This is in answer to your request for an opinion on two questions concerning wholesale-retail relationships.

The first question reads as follows:

"1. With the purchase of 5% Debenture Bonds by the retailer issued by the wholesaler, does such an interest on the part of the retailer in the wholesaler disqualify the wholesaler under the provisions of Section 311.070 RSMo. 1959?"

You subsequently advised us that the wholesale grocer has a five percent wholesale solicitors license.

The applicable part of Section 311.070, supra, reads as follows:

"1. Distillers, wholesalers, wine makers, brewers or their employees, officers or agents, shall not, under any circumstances, directly or indirectly, have any financial interest in the retail business for sale of intoxicating liquors, and shall not, directly or indirectly, loan, give away or furnish equipment, money, credit or property of any kind, except ordinary commercial credit for liquors sold to such retail dealers."

In *Northcutt v. McKibben*, Mo. App., 159 S.W. 2d 699, the court said this about the purpose of the statute, l.c. 705:

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"It was clearly designed to remove the retail dealer of intoxicating liquors from all obligations in a financial or business sense to the wholesaler, except ordinary commercial credit for liquors sold to such retail dealers."

Here the wholesaler has no interest whatsoever in the retail business. A debenture bond is merely evidence of a debt and the retailer is merely a creditor of the wholesaler. The retailer is not obligated in a financial or business sense to the wholesaler.

Therefore, it is our opinion that a retailer purchasing five percent debenture bonds does not violate Section 311.070, supra.

The second question reads as follows:

"2. When a wholesale grocer passes on to its retail affiliates all advertising rebates and quantity purchase discounts in the grocery industry pursuant to a contract between the wholesaler and retailer, is such action violative of Section 311.070?"

Our answer to this second question is based on the general hypothetical question posed and not on any specific discount or rebate agreement. We also assume that the wholesaler has no financial interest in the retail affiliates. Otherwise there would be a violation of Section 311.070, supra.

This second question, then, would be covered not by Section 311.070, supra, but by Section 311.332, RSMo 1959. This section reads as follows:

"It shall be unlawful for any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five per cent by weight to persons duly licensed to sell such intoxicating liquor and wine at retail, to discriminate between retailers or in favor of or against any retailer or group of retailers, directly or indirectly, in price, in discounts for time of payment, or in discounts on quantity of merchandise sold, or to grant directly or indirectly, any discount, rebate, free goods, allowance or other inducement, excepting a discount not in excess of one per cent for

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quantity of liquor and wine, and a discount not in excess of one per cent for payment on or before a certain date."

The Liquor Control Act is "a comprehensive scheme for the regulation and control of the manufacture, sale, possession, transportation and distribution of intoxicating liquor." John Bardenheier Wine & Liquor Co. v. City of St. Louis, 345 Mo. 637, 135 S.W. 2d 345.

It is our opinion that Section 311.332, supra, applies only to sales of intoxicating liquor and does not apply to sale of groceries generally. Therefore, under Section 311.332, supra, any quantity purchase discount agreements for intoxicating liquor would be regulated and any rebates for liquor advertisement would be prohibited.

This opinion does not preclude in a particular situation the Supervisor of Liquor Control from finding that either grocery discounts or grocery advertising rebates are being used as a subterfuge to indirectly grant discounts or rebates for liquor purchases.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General