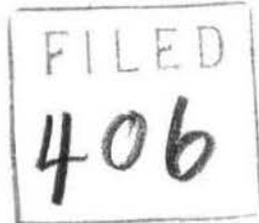


November 24, 1965



Honorable Fielding Potashnick
Prosecuting Attorney
Scott County
Sikeston, Missouri

Dear Mr. Potashnick:

We have your request for an opinion as follows:

"We have several cases pending here in Scott County which are based on essentially the same facts. All the defendants are presently charged under Section 311.325, R.S.Mo. 1959. The facts are as follows:

"A minor who is the owner and/or operator of an automobile is stopped by the police for investigation and intoxicating liquor (usually beer) is found in the car. An adult also occupies the car and proves that he was the one who purchased the beer which is still cold. There is no evidence that the minor had been partaking of the beer or any other alcoholic beverages.

"If this minor guilty of possession under the above named statute?

"Would it make any difference if the minor were not the owner and/or operator of the automobile but still there was an adult in the car who had purchased the beer and the minor had not consumed any of it."

Frankly, we regard this matter as presenting a question of fact only. If, as you say, an adult in the car proves that he purchased the beer and there is no proof that the minor is, in

Honorable Fielding Potashnick

fact, the owner thereof then your case must necessarily fail.

The true ownership of the beer is, in final analysis however, a question for a jury to decide, but you must, in the first instance, convince a judge that there is sufficient factual matter to raise an issue. See *State vs. Nelson*, 21 S.W.2d 190.

There is, after all, a presumption of innocence which can only be overcome by positive evidence which does not seem to be contained in the situation which you outline. See *State vs. Castaldi*, 386 S.W.2d 392, 395 [1-3], for an analogous circumstance.

Very truly yours,

|
NORMAN H. ANDERSON
Attorney General

HIM:aa