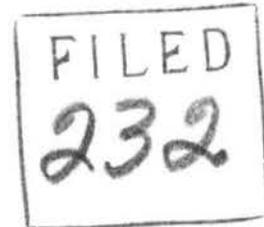


LIQUOR: A suspension of imposition of sentence after a finding of guilty is not a conviction within the meaning of the Liquor Control Law, Chapter 311, RSMo, and the Nonintoxicating Beer Law, Chapter 312, RSMo.

OPINION NO. 232

August 11, 1966



Honorable Lawrence F. Gepford
Prosecuting Attorney
Jackson County
Kansas City, Missouri

Dear Mr. Gepford:

This is in answer to your request for an opinion on whether the following constitutes a conviction within the meaning of the Missouri Liquor Control Law. You have stated that after a jury finding of guilty a federal district court made the following judgment and order:

"It Is Adjudged that the defendant is guilty as charged and convicted.

"It Is Adjudged that imposition of sentence of imprisonment or fine is suspended as to Count 8, and defendant is placed on probation for a period of five (5) years under the general conditions of probation adopted by the Court, which will be communicated to the defendant orally and in writing by the U. S. Probation Office. No costs assessed."

Section 311.060, RSMo 1959, of the Liquor Control Law and Section 312.040, RSMo 1959, of the Nonintoxicating Beer Law both provide that "conviction" of certain laws disqualifies that person for a liquor license.

The Kansas City Court of Appeals in Meyer v. Missouri Real Estate Commission, 238 Mo App 476, 183 SW 2d 342, met this question of what constitutes a conviction in relation to the Missouri Real Estate Law. There the Real Estate Law provided, l.c. SW2d 343, that anyone "convicted" of certain offenses would have his real estate license revoked. Plaintiff had been "convicted" of embezzlement and

Honorable Lawrence F. Gepford

filed a declaratory judgment action that this was not a conviction as meant by the Real Estate Law. Plaintiff had entered a plea of nolo contendere to the charges of embezzlement and the Federal District Court entered the following order, l.c. SW2d 342:

"For good cause shown, the Court doth Order that the imposition of sentence upon the defendant under each of counts two, three, four, five, six and seven and eight of the indictment be, and the same is hereby suspended and said defendant, Franklyn E. Meyer, placed on probation thereunder for a period of Three (3) Years in accordance with conditions of probation this day filed herein."

The court in holding that this was not a conviction within the meaning of the Real Estate Law said, l.c. SW2d 345:

"* * * We have been cited to no authority holding that the suspension of the imposition of the sentence, or the suspension of the sentence, itself, upon a plea or a verdict of guilty, and the placing of the defendant upon probation, is a final judgment within the meaning of the statutes giving effect to such proceedings in another proceeding.

It is held that where there has been a suspended sentence there is no final judgment. People v. Page, supra, 125 Misc. 538, 211 N.Y.S. 401, loc. cit. 405; 24 C.J.S., Criminal Law, Sections 1571, 1618, pp. 47, 187. If this is so it would seem that, certainly, where there has been no sentence at all but merely a suspension of the imposition of sentence, as in this case, there has been no such judgment.

"[2] We are of the opinion that the word 'conviction', as used in the Missouri Real Estate Commission Act, should be taken in its most comprehensive sense, that is, to include the judgment of the court upon a verdict or confession of guilt. * * * "

Honorable Lawrence F. Gepford

And, l.c. SW2d 346, 347:

"* * * However, where the reference is to the ascertainment of guilt in another proceeding (as here), and the question as to its bearing upon the status or rights of the individual in a subsequent case is under consideration, a broader meaning is to be attached to the word 'conviction', and a person is not deemed to have been convicted unless it is shown that a judgment is pronounced upon a verdict or plea of guilty. The rule is well stated in *People v. Fabian*, supra, as follows: 'Where sentence is suspended, and so the direct consequences of fine and imprisonment are suspended or postponed temporarily or indefinitely, so, also, the indirect consequences are likewise postponed.'"

Thus, the Meyer case, supra, held that there is no conviction where imposition of sentence is suspended and the defendant is placed on probation.

The Supreme Court in *Wilson v. Burke*, 202 SW2d 876, restated the holding in Meyer, supra. In the Wilson case an applicant for a liquor license had been found guilty on a plea of nolo contendere of a federal liquor law and been fined two hundred and fifty dollars. The applicant contended this was not a conviction because of the nolo contendere plea. The court in holding there was a conviction distinguished the Meyer case and said this, l.c. 878:

"In that case, however, there was no 'conviction'. Meyer entered a nolo contendere plea to the embezzlement charge and the Court's judgment therein recited that 'the imposition of sentence * * * be, and the same is hereby suspended and said defendant * * * placed on probation'. In that case Meyer was never (as was respondent here) 'found guilty' and there never was in Meyer's case a judgment of 'conviction'. The Meyer case is no authority for the contentions which respondent makes in the instant case."

Honorable Lawrence F. Gepford

It is our opinion that the Meyer case, supra, is controlling here. We have considered *Neibling v. Terry, Mo.*, 177 S.W.2d 502; *Berman v. United States*, 302 U.S. 211, 82 L.Ed. 204, 58 S.Ct. 164; *Korematsu v. United States*, 319 U.S. 432, 87 L.Ed. 1497, 63 S.Ct. 1124; and *Tanzer v. United States*, 278 F.2d 137, cert. denied 364 U.S. 863, 5 L.Ed. 2d 85, 81 S.Ct. 103. Therefore, a suspension of imposition of sentence after a finding of guilty is not a conviction within the meaning of the Liquor Control Law, Chapter 311, RSMo, and the Nonintoxicating Beer Law, Chapter 312, RSMo.

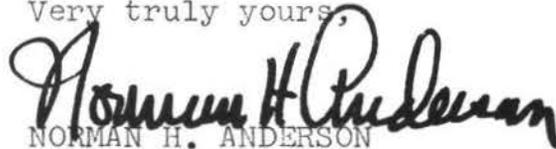
We have examined the case of *Roberts v. United States*, 320 U.S. 264, 268; *Korematsu v. United States*, 319 U.S. 432; *Tanzer v. United States*, 278 F.2d 137, certiorari denied, 364 U.S. 863. While the Federal Courts may subscribe to a different principle relative to whether the suspension of the imposition of sentence constitutes a conviction, we are convinced that the Missouri Courts have not adopted that view. We have not been asked and this opinion does not rule on the question of whether a person who has been found guilty of tax evasion is a person of good moral character within the meaning of Chapter 311 and Chapter 312 of the Missouri statutes.

CONCLUSION

It is the opinion of this office that a suspension of imposition of sentence after a finding of guilty is not a conviction within the meaning of the Liquor Control Law, Chapter 311, RSMo, and the Nonintoxicating Beer Law, Chapter 312, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Very truly yours,



NORMAN H. ANDERSON
Attorney General