

ELECTIONS:
LIQUORS:
INTOXICATING LIQUORS:
LIQUOR CONTROL:

Wholesalers may lawfully make deliveries of liquor and beer to retailers on election days.

OPINION NO. 328

October 18, 1968

Honorable Jack J. Schramm
State Representative
St. Louis County - 37th District
7529 Gannon Avenue
University City, Missouri 63130



Dear Representative Schramm:

Reference is made to your letter requesting a formal opinion of this office as follows:

"Is there any provision under Missouri Statutes prohibiting the delivery of intoxicating liquor, intoxicating beer, and non-intoxicating beer to retail outlets on the day of any election? Sections 311.290 and 311.480 of the Missouri Statutes prohibit drinking or consumption on election days but seem to be silent on the question of delivery from wholesaler to retailer."

Further information in regard to this matter has been developed by telephone conversation with you. It is our understanding that the deliveries of liquor and beer about which you have inquired are made pursuant to sales agreements between wholesalers and retailers. Deliveries are made by trucks owned by the wholesalers and operated by employees of the wholesalers. Regular daily delivery schedules are maintained to various retail outlets. If the wholesalers are not permitted to make deliveries on election days, regular delivery schedules must be revised and the cost of deliveries is increased by reason of additional equipment and personnel required to make up deliveries which ordinarily would have been made on election day.

The applicable statutory provisions are set forth in Section 311.290, RSMo Cum. Supp. 1967. The relevant provisions of the cited statute are as follows:

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"No person having a license under this law nor any employee of such person shall sell, give away or otherwise dispose of, or suffer the same to be done upon or about his premises, any intoxicating liquor in any quantity * * * after 1:30 a.m. upon the day of any general, special or primary election in this state * * * or after 1:30 a.m. upon the day of any county, township, city, town or municipal election * * * . * * * the sale of intoxicating liquor may be resumed * * * on any such election day after the expiration of thirty minutes next following the hour or time fixed by law for the closing of the polls at any such election. * * * " (emphasis added)

It is noted that the statute prohibits a person having a license from selling intoxicating liquor on election days upon or about his premises. The deliveries of intoxicating liquor by wholesalers to retailers are performed pursuant to a sales agreement. The question for our consideration becomes whether or not such deliveries constitute sales upon or about the licensed wholesalers premises. An examination of the cases in Missouri courts discloses that a sale of intoxicating liquor is not completed until delivery is made. The cases on the subject are collected and discussed in Clark v. Crown Drug Co. (Springfield Appeals), 146 S.W.2d 98. In the cited case plaintiff, a licensed liquor retailer, sought an injunction against defendant, a licensed liquor retailer, for the unlawful sales of liquor. The applicable statute prevented the sales of liquor in any other place than that designated in the license. The defendant was receiving orders for liquor by telephone at its licensed place of business and was delivering liquor pursuant to such orders to telephone customers at places other than the licensed place of business (presumably residences, apartments, etc.). Plaintiff contended that such sales were made at a place other than that designated in the license by reason of such deliveries and therefore, such sales were in violation of the statute. The court concluded that deliveries were part of the sale and that the sale was not completed until delivery was made. Inasmuch as delivery was at a place other than that designated in the license, the sale was not made on the licensed premises and was in violation of the statute. An injunction against the unlawful sales was issued.

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Upon transfer to the Supreme Court the cited case was reversed. 152 S.W.2d 145. However, the reversal was based upon the grounds that the plaintiff had no legal right to an injunction. The court assumed but did not decide that the telephone sales violated the law. Therefore, the cited case, together with the cases collected therein, remains the law in this state that delivery is necessary to complete a sale of liquor.

In applying Clark v. Crown Co. to the facts under consideration and to Section 311.290, it is concluded that deliveries of liquor by a wholesaler to a retailer pursuant to a sales agreement do not constitute a sale of intoxicating liquor upon or about the wholesaler's premises and therefore, such deliveries on election days are not prohibited by Section 311.290.

The obvious purpose of Section 311.290 is to prevent the sale, gift or other disposition of intoxicating liquor upon licensed premises on days of elections. It appears that it was the intent of the legislature to prevent the use of intoxicating liquor as a corrupting influence in the conduct of elections. The tendency for the abusive use of liquor in elections is through retail establishments rather than through wholesale establishments because retail establishments rather than wholesale establishments are the outlets to the consuming public for intoxicating liquor. Therefore, the conclusion reached that a licensed wholesaler is not prohibited from delivering intoxicating liquor to licensed retailers on election days is consistent with and in harmony with the legislative intent.

Although a wholesaler is not prohibited from delivering intoxicating liquor to retailers on election days, other provisions of the statute make it necessary to consider whether or not licensed retailers are prohibited from receiving deliveries of liquor from wholesalers on election days.

Relevant provisions of Section 311.290, RSMo Cum. Supp. 1967, are as follows:

" * * * if said person has a license to sell intoxicating liquor by the drink, his premises shall be and remain a closed place as defined in his section after 1:30 a.m. (until thirty minutes after the polls close). * * * "

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The section further provides as follows:

" * * * Where such licenses authorizing the sale of intoxicating liquor by the drink are held by clubs or hotels, this section shall apply only to the room or rooms in which intoxicating liquor is dispensed; * * * "

The section further provides as follows:

" * * * and where such licenses are held by restaurants whose business is conducted in one room only and substantial quantities of food and merchandise other than intoxicating liquors are dispensed, then the licensee shall keep securely locked during the hours and on the days herein specified all refrigerators, cabinets, cases, boxes and taps from which intoxicating liquor is dispensed. * * * "

The section further provides as follows:

" * * * A 'closed place' is defined to mean a place where all doors are locked and where no patrons are in the place or about the premises. * * * "

These statutory provisions must be considered in determining whether or not the licensees referred to therein can receive deliveries of intoxicating liquor during the prohibited times on election days. The provisions apply to premises upon which intoxicating liquor by the drink may be sold with modifications thereof for licenses held by clubs, hotels and restaurants.

These provisions of the statute should be construed with a view to accomplish the legislative intent. It appears that the legislature provided for a closed place to prohibit patrons from being on the premises and that an establishment be locked so as to keep patrons out. We do not believe that the legislature intended to prohibit a proprietor and his employees from being within the place of business during the prohibited hours to clean, repair, take inventory, keep reports and re-stock inventory so that the business may be prepared to serve its patrons when the premises may be lawfully opened for business purposes. The statute requires all doors to be locked and prohibits any patrons from being on the premises. The statute does not prohibit the proprietor and his

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employees from being on the premises. If the statute were to be literally interpreted to require the doors to remain locked during the entire prohibited time, the proprietor and his employees performing lawful functions on the premises could not lawfully leave the premises during the prohibited time. Such an interpretation would be so absurd as to give a ridiculous meaning to the language of the statute. Therefore, this office concludes that although the doors must remain locked to patrons and that no patrons remain on the premises during the prohibited times, persons other than patrons may have ingress and egress to the premises for lawful purposes such as cleaning, repairing and deliveries of supplies including stocks of intoxicating liquor.

The conclusions above, which interpret a closed place as used in the statute, apply also to the room or rooms in which intoxicating liquor is dispensed in clubs or hotels. Such room or rooms must remain locked to patrons during the prohibited times but are lawfully accessible for the purposes of cleaning, repairing and receiving deliveries of stocks of intoxicating liquor.

The statutory provision in regard to restaurants which hold licenses for the sale of intoxicating liquor by the drink requires liquor refrigerators, cabinets, cases, boxes and taps to be securely locked during the prohibited times. This office concludes that the provision regarding the locking of containers in restaurants on election days applies only to prevent the taking of intoxicating liquor out of such containers and does not prevent the restaurant owner from opening such containers for the purpose of repair, maintenance, inventory and re-stocking.

Therefore, this office concludes that holders of licenses for the retail sale of intoxicating liquor may lawfully receive deliveries of intoxicating liquor from wholesalers on election days.

You have also inquired about the applicability of Section 311.480, RSMo 1959, to these questions. The cited section applies to licenses which permit the drinking or consumption of intoxicating liquor in places where food, beverage or entertainment is sold or provided. These places are commonly referred to as "set-up" places. Inasmuch as such places are not permitted to sell intoxicating liquor, licensed wholesalers would not have the occasion to make deliveries of intoxicating liquor to such places. Therefore, no question is raised concerning deliveries of intoxicating liquor to these places on election days.

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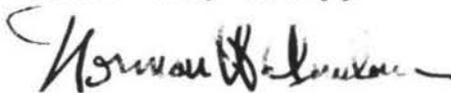
You have also inquired as to any provision of the statutes which prohibits the delivery of non-intoxicating beer to retail outlets on the day of any election. Chapter 312, RSMo, contains the laws in regard to non-intoxicating beer. These laws make no provision prohibiting the sales of non-intoxicating beer on election days. Therefore, the delivery of non-intoxicating beer by wholesalers to retailers on election days is not prohibited by law.

CONCLUSION

It is the opinion of this office that licensed wholesalers may lawfully make deliveries of intoxicating liquor (including intoxicating beer and non-intoxicating beer) to retail outlets on all election days; and that licensed retailers may lawfully receive deliveries of intoxicating liquor (including intoxicating beer and non-intoxicating beer) on election days.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Thomas J. Downey.

Yours very truly,



NORMAN H. ANDERSON
Attorney General