

LIQUOR:
INTOXICATING LIQUOR:
LICENSES:

1. An applicant for a liquor license in this state must be denied a license by the Supervisor where he has been convicted under the laws of the United States or of any state of an offense involving a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor subsequent to the ratification of the Twenty-first Amendment to the Constitution of the United States.

2. An applicant for a liquor license in this state must be denied such license by the Supervisor where he has been convicted in another state of an offense not related to any liquor laws but which is a felony under the laws of that state where such conviction disqualifies him from voting under the laws of this state.

3. Where the conviction or convictions are not sufficient to disqualify an applicant on the above grounds, the Supervisor of Liquor Control may refuse to grant such applicant a license where the circumstances surrounding such conviction or convictions are such as to show bad moral character.

OPINION NO. 439

October 30, 1969

Mr. Harry Wiggins, Supervisor
Department of Liquor Control
Broadway State Office Building
Jefferson City, Missouri 65101



Dear Mr. Wiggins:

This is in response to your request for an opinion concerning whether or not a person is entitled to a liquor license issued by the State of Missouri where he has been convicted in another state of a law relating to the sale or manufacture of intoxicating liquor under the laws of that state or where he has been convicted of a felony in that state.

The qualifications necessary for obtaining a license in this state are set out in §311.060, RSMo. 1959. Section 311.060, subsection 1, provides:

"1. No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good

Mr. Harry Wiggins

moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village; and no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, or who employs in his business as such dealer, any person whose license has been revoked or who has been convicted of violating such law since the date aforesaid; provided, that nothing in this section contained shall prevent the issuance of licenses to nonresidents of Missouri or foreign corporations for the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of intoxicating liquors to, by or through a duly licensed wholesaler, within this state."

The authority to determine whether or not an applicant for a state license to sell intoxicating liquor meets these statutory qualifications is vested in the State Supervisor of Liquor Control. See State ex rel. Floyd v. Philpot, 266 S.W.2d 704, 710 (Mo. en banc 1954).

Where the applicant has been convicted in another state, subsequent to the ratification of the Twenty-first Amendment to the United States Constitution, for an offense relating to the sale or manufacture of intoxicating liquor under the laws of that state, the Supervisor of Liquor Control has no discretion in deciding whether or not to allow such an applicant a license. Section 311.060 provides that:

". . . no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, . . ."

In the case of Wilson v. Burke, 202 S.W.2d 876 (Mo. 1947), the Missouri Supreme Court found a conviction in the United States District Court for failure to pay the occupation tax required by federal law for carrying on the business of a wholesale liquor

Mr. Harry Wiggins

dealer to be sufficient to justify the Supervisor of Liquor Control in refusing to grant a license to an otherwise qualified applicant. The court found that Section 4906, RSMo 1939 (said section is identical to §311.060, subsection 1, RSMo 1959) ". . . merely requires the conviction to be a violation of a law applicable to the sale of intoxicating liquor." *Id.* at 879. Where the statutes are silent as to whose laws are to be considered in determining qualifications, the Missouri Supreme Court has consistently found no intent on the part of the legislature to disqualify only those who have violated Missouri laws. See *State v. Hermann*, 283 S.W.2d 617 (Mo. en banc 1955) which reaches this conclusion with respect to juror qualifications, and *State ex rel. Barrett v. Sartorius*, 175 S.W.2d 787 (Mo. en banc 1943) which reaches this conclusion with respect to voter qualifications. These cases clearly indicate that the Supervisor of Liquor Control cannot issue a license under the provisions of Missouri's Liquor Control Act to an applicant who has been convicted in another state subsequent to the ratification of the Twenty-first Amendment to the United States Constitution of an offense which relates to the sale or manufacture of intoxicating liquor under the laws of that state.

Where an applicant has been convicted in another state for an offense unrelated to the sale or manufacture of intoxicating liquor but which is a felony in that state, the Supervisor cannot grant a license where the offense would be sufficient to prevent the applicant from voting in this state. Section 311.060 provides that an applicant for a license in this state must be "a qualified legal voter." Section 111.021, Senate Bill No. 134, 75th General Assembly provides:

"Only citizens of the United States, including residents of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, shall be entitled to register and vote at all elections by the people. Each voter shall vote only in the township or election district in which he resides, or if in a town or city, then in the election district or precinct in which he resides. No person who is adjudged incompetent or while confined in any public prison shall be entitled to register and vote at any election under the laws of this state; nor shall any person convicted of a felony, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to register and vote at any election unless he has been granted a full pardon by the properly authorized state or federal authority."

Mr. Harry Wiggins

This statute is in keeping with Article VIII, §2, Missouri Constitution of 1945 which provides:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, are entitled to vote at all elections by the people. Citizens of the United States who are otherwise qualified to vote under this section and who have resided in this state sixty days or more, but less than one year, prior to the date of a presidential election may be permitted by law to vote for presidential and vice presidential electors at such election but for no other officers. No idiot, no person who has a guardian of his or her estate or person and no person while kept in any poorhouse at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting. All persons voting for the presidential and vice presidential electors under the sixty day resident provision shall sign an affidavit as to their eligibility to vote under said section, and any person who falsifies said affidavit shall, upon conviction, be deemed guilty of a felony."

This constitutional provision contains a broad grant of power to the legislature. It contains no language limiting the term "felony" to those felonies committed in the State of Missouri. Neither the constitutional provision nor the statute implementing it can be construed to disqualify from voting only those who have been convicted of a felony in this state. This was the conclusion reached by the Missouri Supreme Court in dealing with the forerunners of the above sections, §2, Article VIII, Missouri Constitution of 1924 and §11469, R.S. 1939. See State *ex rel.* Barrett v. Sartorius, 175 S.W.2d 787 (Mo. en banc 1943). The *Sartorius* case has been given wide effect in this state. It was followed by the Kansas City Court of Appeals in determining whether a voter who had been convicted in federal court of violation of income tax laws, which was a felony under federal law even though the voter's conduct which resulted in conviction of this federal felony would have only resulted in a misdemeanor under state law, was properly disqualified as a voter under state law. In Bruno v. Murdock, 406 S.W.2d 294, 297 (K.C.Mo.App. 1966), the court said:

Mr. Harry Wiggins

". . . Bruno was convicted of a federal felony and under the majority decision in Satorious the judgment of the trial court affirming the action of the Board of Election Commissioners in striking his name from the registration roll of eligible voters was the correct one, notwithstanding that his conduct which resulted in his conviction of a federal felony was then and is now only a misdemeanor in this state. . . ."

Thus, it is clear that the voting restrictions contained in §111.021, Senate Bill No. 134, 75th General Assembly apply to those who have been convicted of felonies in other jurisdictions. Also, it is clear that the law of the jurisdiction where the conviction was rendered will be used to determine whether or not the offense was indeed a felony. Therefore, where the Supervisor of Liquor Control possesses information that an applicant for a state liquor license has been in fact convicted of a felony in another jurisdiction which would be sufficient to deny such applicant the right to vote under the laws of this state, the Supervisor of Liquor Control must refuse such applicant a license under the Liquor Control Act.

Where the offense or offenses against the laws of another state are not sufficient to disqualify one from voting in this state, the Supervisor of Liquor Control may deny the granting of a liquor license if he determines that the circumstances surrounding this conviction or convictions are sufficient to indicate that an applicant with such a record is a person of bad moral character.

CONCLUSION

Therefore, it is the opinion of this office that:

1. An applicant for a liquor license in this state must be denied a license by the Supervisor where he has been convicted under the laws of the United States or of any state of an offense involving a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor subsequent to the ratification of the Twenty-first Amendment to the Constitution of the United States.
2. An applicant for a liquor license in this state must be denied such license by the Supervisor where he has been convicted in another state of an offense not related to any liquor laws but which is a felony under the laws of that state where such conviction disqualifies him from voting under the laws of this state.
3. Where the conviction or convictions are not sufficient to disqualify an applicant on the above grounds, the Supervisor of Liquor

Mr. Harry Wiggins

Control may refuse to grant such applicant a license where the circumstances surrounding such conviction or convictions are such as to show bad moral character.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General