

LIQUOR:

INTOXICATING LIQUOR:

1. Senate Bill No. 37, 75th General Assembly, does not apply to sales of 3.2% non-intoxicating beer. 2. Senate

Bill No. 37 does not permit persons under the age of twenty-one years working in drug stores or grocery stores of the type mentioned therein to stock shelves, arrange displays, provide carry out service, or perform other tasks necessary to the exposure of intoxicating liquor for sale as such activities involve the sale or assisting in the sale or dispensing of intoxicating liquor but authorizes persons eighteen or over to accept payment for intoxicating liquor.

OPINION NO. 78

April 6, 1970

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 the effect of Senate Bill No. 37, which was introduced during the regular 1969 legislative session and became law October 13, 1969. Specifically, you inquire whether this new law applies to the sale of 3.2% non-intoxicating beer and if the new law restricts persons between the ages of eighteen to twenty-one to the mere acceptance of money in payment of intoxicating liquor or whether such persons may otherwise assist in such sales by stocking shelves and by providing carry out service to automobiles.

Senate Bill No. 37, 75th General Assembly, as passed, reads:

"1. Except as provided in subsection 2 of this section, no person under the age of twenty-one years shall sell or assist in the sale or dispensing of intoxicating liquor.

"2. In any drug store or grocery store licensed under Section 311.200 RSMo 1959, subsections 1 and 2 where at least sixty percent of the gross sales made consists of goods, merchandise, or commodities other than intoxicating liquor in the original package, persons at least eighteen years of age may accept payment for intoxicating liquor. Delivery of intoxicating liquor away from the licensed business premises cannot be performed by anyone under the age of twenty-one years."

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As can be seen, the new law creates an exception only in the area of sales of intoxicating liquor in drug or grocery stores where at least sixty percent of the gross sales made consist of goods, merchandise, or commodities other than intoxicating liquor in the original package.

The term "intoxicating liquor" has a definite meaning in the Liquor Control Act. Section 311.020, RSMo 1959, provides the following definition:

"The term 'intoxicating liquor' as used in this chapter, shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of three and two-tenths per cent of alcohol by weight."

Beer with an alcoholic content of 3.2% or less is not covered by the term "intoxicating liquor," and therefore sales of such beer are not governed by the provisions of Chapter 311, but rather by the provisions of Chapter 312. Since Senate Bill No. 37 amended Section 311.300, RSMo 1959 and refers specifically to intoxicating liquor, its provisions cannot be used to regulate the sale of 3.2% non-intoxicating beer, as defined and regulated in Chapter 312.

With respect to the scope of Senate Bill No. 37, it is our opinion that said act does not allow persons under the age of twenty-one to stock shelves, arrange displays, or perform other tasks necessary to the exposure of intoxicating liquor for sale. To do so would be to violate the general provisions of subsection 1 of Senate Bill No. 37 which provides that no person under the age of twenty-one years shall sell or assist in the sale or dispensing of intoxicating liquor. Subsection 2 does not provide an exception to the general rule with respect to these particular activities, it only provides that persons of at least eighteen years of age may accept payment for intoxicating liquor.

Also, it is our opinion that subsection 2 of Senate Bill No. 37 does not create an exception to the general rule laid forth in subsection 1 with respect to carry out service as normally provided by drug or grocery stores. Enclosed is Opinion Letter No. 300, issued November 4, 1965, to the Honorable Glennon T. Moran, in which we held that carry out service involved the dispensing of intoxicating liquor and thus could not be performed by a minor. Since carry out service involves the dispensing of intoxicating liquor, it cannot be done by a minor under the provisions of Senate Bill No. 37.

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CONCLUSION

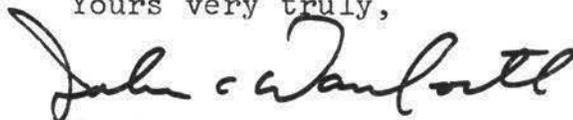
It is the opinion of this office:

1. Senate Bill No. 37, 75th General Assembly, does not apply to sales of 3.2% non-intoxicating beer.

2. Senate Bill No. 37 does not permit persons under the age of twenty-one years working in drug stores or grocery stores of the type mentioned therein to stock shelves, arrange displays, provide carry out service, or perform other tasks necessary to the exposure of intoxicating liquor for sale as such activities involve the sale or assisting in the sale or dispensing of intoxicating liquor but authorizes persons eighteen or over to accept payment for intoxicating liquor.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. Letter No. 300
11-4-65, Moran