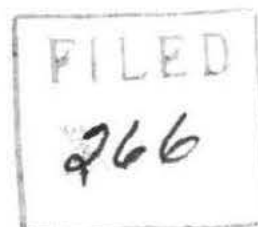


Answer by Letter-Wieler

May 15, 1970

OPINION LETTER NO. 266

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 that portion of Section 311.060, RSMo, which disqualifies for liquor license purposes any person who has been ". . . convicted, since 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manufacture or sale of intoxicating liquor, or who employs in his business as such dealer, any person whose license has been revoked or who has been convicted of violating such law since the date aforesaid;"

With reference to this provision, you have asked the following questions:

- "1. If a person has been convicted of a felony under the National Prohibition Act, is he ineligible to hold a license or to be employed by a licensee under Section 311.060, Revised Statutes of Missouri, 1959?
- "2. If a person has been convicted of conspiracy to violate the Internal Revenue Laws, after repeal [sic, ratification] of the twenty-first amendment, for the sale or manufacture of intoxicating liquor, is he ineligible same under Section 311.060, Revised Statutes of Missouri, 1959?
- "3. Is a conviction for the possession of a still in violation of the Federal Internal

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Revenue Laws, said conviction coming after the ratification of the twenty-first amendment to the United States Constitution, a violation of the law applicable to the manufacture of alcoholic beverages as set forth in Section 311.060, Revised Statutes of Missouri, 1959?

"4. If a person has been convicted of a liquor law for the sale or manufacture of intoxicating liquor after the repeal of prohibition, or of any felony, and then is granted United States Citizenship, would this then remove the ineligibility for a license or for employment as provided in Section 311.060, Revised Statutes of Missouri, 1959?

"5. If a person has been convicted of a liquor law violation for the sale or manufacture of intoxicating liquor after repeal [sic, ratification] of the twenty-first amendment and is granted a full and unconditional pardon from the President of the United States, would this then remove his ineligibility for a license or for employment as set out in Section 311.060, Revised Statutes of Missouri, 1959?

"6. If a person has been convicted of a liquor law violation for the sale or manufacture of intoxicating liquor after repeal [sic, ratification] of the twenty-first amendment, and has served in the armed forces of the United States for not less than one year, and then been discharged under honorable conditions from active service, would the Proclamation of Harry S. Truman, then President of the United States, make the individual eligible to hold a liquor license or to be employed by a licensee?"

These questions will be considered in the order raised.

I

With respect to your first question, it is our opinion that a person who has been convicted of a felony under the National Prohibition Act is eligible to hold a liquor license in this state or be employed by a licensee unless such conviction disqualifies him from voting under the laws of this state, or unless the Supervisor

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of Liquor Control determines that the circumstances surrounding such conviction show bad moral character, providing this person is found to possess the other statutory qualifications. Enclosed are copies of Opinion No. 439, issued to you on October 30, 1969 and Opinion No. 13, issued to the Honorable C. M. Buford on February 5, 1954, which we feel adequately discuss this point. We note that a person convicted of a felony under the National Prohibition Act could not have been convicted subsequent to the ratification date of the Twenty-first Amendment, December 5, 1933, because the repeal of the Eighteenth Amendment on that date made further prosecution under the Act impossible. See U.S. v. Chambers, 291 U.S. 217, 78 L.Ed. 763 (1934).

II

One who is convicted of conspiracy to violate the Internal Revenue Laws dealing with the sale or manufacture of intoxicating liquor subsequent to the ratification of the Twenty-first Amendment is ineligible to hold a liquor license in this state or be employed by a licensee under Section 311.060. The statute provides that one who violates the provisions of any law applicable to the manufacture or sale of intoxicating liquor is ineligible to hold a liquor license. The Missouri Supreme Court has held that a conviction in a United States District Court for failure to pay an occupation tax as required by federal law for carrying on the business of a wholesale liquor dealer is sufficient to allow the Supervisor of Liquor Control to deny an applicant a liquor license. See *Wilson v. Burke*, 202 S.W.2d 876 (Mo. 1947). It is our view that a conviction of conspiracy to violate the Internal Revenue Laws which specifically deal with the sale or manufacture of intoxicating liquor also comes within the phrase "any law applicable to the manufacture or sale of intoxicating liquor."

III

It is our opinion that a conviction subsequent to the ratification of the Twenty-first Amendment for the possession of a still in violation of the Federal Internal Revenue Law is sufficient to render an applicant ineligible to hold a liquor license or be employed by a licensee under Section 311.060, RSMo. The term "still" denotes an apparatus used for the manufacture of intoxicating liquor and, therefore, conviction for possession of a still falls within the phrase "any law applicable to the manufacture or sale of intoxicating liquor."

IV

In answer to your fourth question, it is our opinion that a person who has been convicted of violating a liquor law dealing

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with the sale or manufacture of intoxicating liquor subsequent to the ratification of the Twenty-first Amendment is ineligible to hold a liquor license or be employed by a licensee under Section 311.060, RSMo, even though he was granted United States citizenship subsequent to his conviction. Section 311.060 specifically forbids the granting of a liquor license to one who has been convicted of any law applicable to the sale or manufacture of intoxicating liquor subsequent to the ratification of the Twenty-first Amendment. The granting of United States citizenship does not expunge the record of conviction. With respect to one who has been convicted of a felony unrelated to the liquor law and then granted citizenship, it is our opinion that such person is ineligible to hold a liquor license if such conviction disqualifies him from voting under the laws of this state. A naturalized citizen is made a citizen of the United States under an act of Congress, but the act does not give, regulate or prescribe his capacities. A naturalized citizen gains no priorities but stands on the same footing as a native citizen. See *Osborn et al. v. The Bank of the United States*, 22 U.S. (9 Wheat.) 738, 827, 6 L.Ed. 204, 225 (1824).

V

A person convicted of a liquor law violation involving the sale or manufacture of intoxicating liquor subsequent to the ratification of the Twenty-first Amendment is ineligible to hold a liquor license or be employed by a licensee under Section 311.060 even though he has been granted a full and unconditional pardon from the President of the United States. Enclosed is a copy of Opinion No. 13, issued to the Honorable Edmund Burke on May 16, 1946, which adequately explains this point.

VI

The proclamation of the President of the United States concerning an individual who has served in the armed forces of the United States for not less than one year and then been discharged under honorable conditions would not make that individual eligible to hold a liquor license or be employed by a licensee where he has been convicted of a liquor law violation involving the sale or manufacture of intoxicating liquor subsequent to the ratification of the Twenty-first Amendment. A proclamation by the President has no greater force and effect than a full Presidential pardon would have. It does not expunge the record of conviction. Therefore, the reasoning of Opinion No. 13, as used above, is applicable to this situation.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 439, 10-30-69, Wiggins
Op. No. 13, 2-5-54, Buford
Op. No. 13, 5-16-46, Burke