

LIQUOR:  
INTOXICATING LIQUOR:

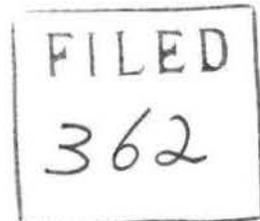
The 1970 census population figures become effective on July 1, 1971, for the purpose of determining whet-

her or not a license to sell liquor by the drink at retail, other than malt liquor containing alcohol not in excess of five percent, for consumption on the premises can be issued in any city having a population of under twenty thousand after the 1970 census. Any license authorizing the sale of intoxicating liquor by the drink at retail for consumption on the premises, other than malt liquor containing alcohol not in excess of five percent, expiring on June 30, 1971, in such a city cannot be renewed unless a majority of the qualified voters of that city have previously authorized such licenses through the provisions of the local option laws of the Liquor Control Act, or until they subsequently do so.

OPINION NO. 362

June 29, 1970

Honorable Harold L. Volkmer  
State Representative  
District No. 100  
120 North Third Street  
Hannibal, Missouri 63401



Dear Representative Volkmer:

This is in response to your request for an opinion from this office concerning the effect of the local option provisions of the Liquor Control Act on any cities in the State of Missouri which showed a population in excess of twenty thousand after the 1960 census but which will show a population of less than twenty thousand after the 1970 census. Specifically, you ask the following questions:

- "1. When does the 1970 census population figures become effective within the meaning of Section 311.090?
- "2. Whether or not a business licensed properly under Chapter 311 prior to the effective date of the census is entitled to continue in business until the expiration of his license under said Chapter, or must the licensee discontinue business upon the effective date of the population census?
- "3. When may the Petition provided for in Section 311.110 be circulated and signed and filed with the city officials? Section 311.090 provides that the election cannot be held until the census has been completed."

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Section 311.090, RSMo 1959, provides:

". . . no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five per cent by weight, by the drink at retail for consumption on the premises where sold, in any incorporated city having a population of less than twenty thousand inhabitants, until the sale of such intoxicating liquor, by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of said city. Such authority to be determined by an election to be held in said cities having a population of less than twenty thousand inhabitants, under the provisions and methods set out in this chapter. The population of said cities to be determined by the last census of the United States completed before the holding of said election; . . ."

In Opinion No. 13, issued March 16, 1949, to Mr. Edmund Burke (copy enclosed), we determined that the words "last census of the United States" meant the last Federal decennial census. Section 1.100, RSMo 1959, provides that the population of any political subdivision shall be determined on the basis of the last previous decennial census of the United States. It also provides that the effective date of the 1960 decennial census is July 1, 1961, and the effective date of each succeeding decennial census is July 1 of each tenth year after 1961. Therefore, it is our opinion that the 1960 census figures are controlling in determining whether or not a license for the retail sale of liquor by the drink for consumption on the premises can be issued without compliance with the local option provisions of the Liquor Control Act until July 1, 1971, at which time the 1970 census figures become effective. As of July 1, 1971, no license can be issued for the retail sale of liquor by the drink for consumption on the premises, other than malt liquor containing alcohol not in excess of five percent by weight, in any city showing a population of less than twenty thousand according to the 1970 census unless or until such licensing shall have been authorized by a vote of the majority of the qualified voters of said city pursuant to the local option provisions of the Liquor Control Act.

Section 311.240, Sub. 1, RSMo 1959, provides that all liquor licenses shall expire on June 30 of each year. Therefore, those licenses authorizing the sale of intoxicating liquor by the drink

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for consumption on the premises, other than malt liquor with an alcoholic content not exceeding five percent, issued in any city showing a population loss from over twenty thousand to under twenty thousand inhabitants according to the 1970 census cannot be renewed following their expiration on June 30, 1971, unless or until a majority of the qualified voters of such city have approved said sales by the drink at retail for consumption on the premises.

With respect to your third question, it is our opinion that a special election to determine whether or not intoxicating liquor may be sold by the drink at retail for consumption on the premises can be held at any time, provided that such an election has not been held within four years previously. Section 311.110, RSMo 1959, provides that an election shall be held within forty days after receipt of a petition signed by one-fifth of the qualified voters of any incorporated city to determine whether or not intoxicating liquor, other than malt liquor containing not to exceed five percent of alcohol by weight, shall be sold, furnished or given away within the corporate limits of such incorporated city. Section 311.160, RSMo 1959, provides that once an election has been held and decided either for or against the sale of intoxicating liquor by the drink at retail for consumption on the premises, the question shall not again be submitted to a vote for at least four years in the same incorporated city, and then only on a petition conforming to the provisions of the local option law. Obviously, it was not the intention of the legislature in Section 311.090 to limit local option elections only to those cities having a population of less than twenty thousand, but rather simply to insure that sales of liquor by the drink at retail for consumption on the premises in cities with a population of less than twenty thousand shall have been authorized, at some point, by a vote of the majority of the qualified voters of said city. Since the statutes provide that an election can be held in a city of any size for the purpose of approving or disapproving liquor by the drink, and, further, since the statutes provide that the results of this election are binding for at least four years in that city and can then be changed only by further action under the local option provisions, it is our view that the decision of the majority of the qualified voters in any city remains in effect until changed by a subsequent election, regardless of population changes.

Having reached this conclusion, we are obliged to withdraw Opinion No. 78, issued on October 4, 1950, to the Honorable Carl F. Sapp. That opinion held that a vote of disapproval of liquor by the drink by a majority of the residents of a city of under twenty thousand inhabitants would not apply as a matter of law when the city attained a population of over twenty thousand.

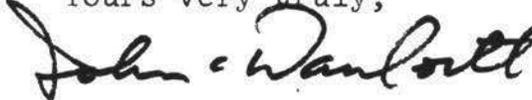
CONCLUSION

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Therefore, in answer to your request, it is our opinion that the 1970 census population figures become effective on July 1, 1971 for the purpose of determining whether or not a license to sell liquor by the drink at retail, other than malt liquor containing alcohol not in excess of five percent, for consumption on the premises can be issued in any city having a population of under twenty thousand after the 1970 census. Any license authorizing the sale of intoxicating liquor by the drink at retail for consumption on the premises, other than malt liquor containing alcohol not in excess of five percent, expiring on June 30, 1971 in such a city cannot be renewed unless a majority of the qualified voters of that city have previously authorized such licenses through the provisions of the local option laws of the Liquor Control Act, or until they subsequently do so.

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

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 13  
3-16-49, Burke