

LIQUOR:
SUNDAY SALES:

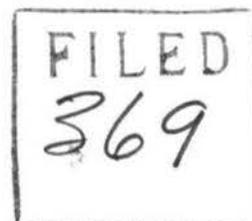
It is not necessary for a municipality, which allows the sale of liquor-by-the-drink, to pass an

ordinance authorizing Sunday sales of liquor-by-the-drink where such sales are specifically provided for by the state Liquor Control Act. A municipality which allows the sale of liquor-by-the-drink cannot completely prohibit, by ordinance, the sale of liquor-by-the-drink on Sunday within that municipality where such sale is authorized by state law.

OPINION NO. 369

July 8, 1971

Honorable Dick B. Dale
Representative, District 83
610 East Main
Richmond, Missouri 64085



Dear Representative Dale:

This is in response to your request for an opinion concerning the sale of intoxicating liquor-by-the-drink on Sunday as authorized by the Liquor Control Act.

Specifically, you have asked us whether a municipality must authorize, by ordinance, Sunday sales of liquor-by-the-drink as provided for by Sections 311.298, RSMo 1969, and 311.097, Senate Bill No. 148, 76th General Assembly, which will become effective 90 days after the adjourning of the first regular session of the 76th General Assembly; and whether a municipality, by ordinance, may prohibit such sales.

Section 311.097, as enacted by the 76th General Assembly, provides for the licensing of "restaurant bars," as such term is described in that act, to sell intoxicating liquor-by-the-drink on Sunday between the hours of 1:00 p.m. and midnight, providing that such establishment meets the other qualifications set forth in Chapter 311 with respect to the sale of intoxicating liquor-by-the-drink. Section 311.298 provides that any person having a license to sell intoxicating liquor-by-the-drink may sell intoxicating liquor-by-the-drink on Sunday between the hours of 1:00 p.m. and "until the time which would be lawful on another day of the week" when such Sunday falls on December 31.

In our opinion, it is not necessary for a municipality, which has authorized the sale of liquor-by-the-drink, to pass an ordinance specifically authorizing the Sunday sales set forth in Section 311.298 and Section 311.097. The state Liquor Control Act specifically authorizes these sales on Sunday and would need no implementation by local ordinance.

Honorable Dick B. Dale

With respect to your second question, it is our opinion that a municipality, which has authorized the sale of intoxicating liquor-by-the-drink, cannot enact an ordinance completely prohibiting the sale of liquor-by-the-drink on Sunday if licensees within the municipality are otherwise qualified under the Liquor Control Act. Although Section 311.220, sub. 2, RSMo 1969, allows municipalities to make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, the section specifically provides that all such ordinances must not be inconsistent with the provisions of the state Liquor Control Act. Inasmuch as the legislature has authorized the sale of liquor-by-the-drink on Sundays under the circumstances outlined in Sections 311.298 and 311.097, a municipal ordinance completely prohibiting such sales would be inconsistent with state law and, therefore, invalid. See *City of St. Louis v. Klausmeier*, 112 S.W. 516, 518 (Mo. banc 1908) and *Vest v. Kansas City*, 194 S.W.2d 38 (Mo. 1946).

CONCLUSION

It is the opinion of this office that:

1. It is not necessary for a municipality, which allows the sale of liquor-by-the-drink, to pass an ordinance authorizing Sunday sales of liquor-by-the-drink where such sales are specifically provided for by the state Liquor Control Act.

2. A municipality which allows the sale of liquor-by-the-drink cannot completely prohibit, by ordinance, the sale of liquor-by-the-drink on Sunday within that municipality where such sale is authorized by state law.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General