



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

June 8, 1973

JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 179

Honorable William Raisch
Representative, District 107
Room 236D, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Raisch:

This letter is in response to your opinion request on the following submitted question:

"Do the provisions of Missouri's Liquor Control Law, specifically sections 311.332, 311.334, and 311.336, RSMo, relating to regulation of liquor prices constitute illegal price fixing or illegal collusion in pricing?"

The United States Supreme Court decided in the case of Parker v. Brown, 317 U.S. 341 (1943) that certain activities of state governments were not included in the proscriptions of the federal restraint of trade laws. The decision in Parker has been illuminated upon frequently by federal courts. The general rule is that when a state acts in its sovereign capacity, as opposed to acting in a proprietary function, such activities are not proscribed by restraint of trade laws.

In a recent case discussing the Parker immunity, George R. Whitten, Jr., Inc. v. Paddock Pool Builders, Inc., 424 F.2d 25 (1st Cir. 1970), the First Circuit, in determining when immunity from restraint of trade laws applies, stated:

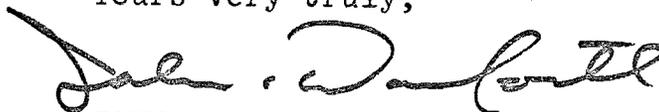
". . . Our reading of Parker convinces us that valid government action confers antitrust immunity only when government determines that competition is not the summum bonum in a particular field and deliberately attempts to provide an alternate form of public regulation."
(424 F.2d 25, 30)

Honorable William Raisch

It is this office's opinion that the enactment by the General Assembly of the state of Missouri of Sections 311.332, 311.334, and 311.336, RSMo 1969, constitutes a determination by the state, in its sovereign capacity, that the business within the liquor industry be controlled by appropriate statutes without, in this particular instance, the proscriptions of both federal and state restraint of trade laws being made applicable thereto.

It is the opinion of this office in answer to your letter that Sections 311.332, 311.334, and 311.336, RSMo 1969, relating to the regulation of liquor prices do not constitute "illegal price fixing or illegal collusion in pricing."

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General