

September 22, 1975

OPINION LETTER NO. 97
Answer by Letter - Card

Honorable Jerry E. McBride
State Representative, District 130
Room 118B, Capitol Building
Jefferson City, Missouri 65101



Dear Representative McBride:

This is in response to your request for an opinion of this office on whether a city by ordinance can prohibit the sale of intoxicating liquor on Sunday even if a liquor establishment has been issued a retail by the drink license under the provisions of § 311.095, RSMo, and has also obtained a Sunday bar license pursuant to the provisions of § 311.097, RSMo. You state that a third class city has adopted an ordinance which prohibits the sale of intoxicating liquor and non-intoxicating beer within the city limits between the hours of 1:30 a.m. on Sunday and 6:00 a.m. on Monday. The answer to your question, we believe, must be in the negative.

In Crackerneck Country Club, Inc. v. City of Independence, 522 S.W.2d 50 (Mo.Ct.App. at K.C. 1974) (cause retransferred to the Court of Appeals, April 15, 1975 by the Missouri Supreme Court on the grounds that transfer had been improvidently granted), the Court of Appeals has considered almost the precise question and has held that such an ordinance was void because it was in conflict with state law and because it was prohibitory rather than regulatory. There, Rockwood Country Club and Crackerneck Country Club had been licensed by the State of Missouri to dispense liquor by the drink at retail for consumption on the premises Monday through Saturday pursuant to the provisions of § 311.090, RSMo. They had also qualified and obtained from the State of Missouri a restaurant bar license pursuant to the provisions of § 311.097, authorizing them to sell liquor by the drink on Sundays between the hours of 1:00 p.m. and midnight.

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The City of Independence adopted an ordinance which totally prohibited the sale of intoxicating liquor by the drink on Sundays by any city licensee.

We see no difference between the question which you raise and the question which was ruled upon by the court in Cracker-neck except for the fact that here the licensees have qualified for a retail by the drink license under the provisions of § 311.095 rather than § 311.090. However, this difference has no bearing on the holding of the court since § 311.095 provides an alternate basis for obtaining the Monday through Saturday retail by the drink license. See Opinion No. 151, issued April 10, 1974, copy enclosed.

Therefore, we must conclude that a city does not have the authority by ordinance to prohibit the sale of intoxicating liquor on Sunday by those holding licenses issued by the State of Missouri pursuant to the provisions of § 311.095 and § 311.097.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 151,
4-10-74, Garrett