

NON-INTOXICATING BEER: New permit necessary under law as amended,
by 58th General Assembly of the State of Missouri.

5-13
May 8, 1935.



Hon. E.J. Becker,
Supervisor of Liquor Control,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of
May 7 requesting an opinion as to the following state of
facts:

"In confirming Mr. Becker's
telephone conversation of today,
we respectfully request an opinion
on the following subject:

"What is the status of the \$10.00
3.2% beer permit that has been
issued by the Food & Drug Depart-
ment? Does Senate Bill #54, as
recently passed by the Legislature
and signed by the Governor, raising
the license fee from \$10.00 to
\$25.00, make the \$10.00 permit void?

"We quote this as a specific example,
but in conclusion does Senate Bill
#54 make all permits that have been
issued by the Food and Drug Depart-
ment void? This would, of course,
include the \$5.00 original package
permit, the \$50.00 distributors'
permit, and the \$500.00 manufacturers'
permit. * * * * "

Section 13139e, Laws of Missouri 1933, page 258
provides:

"Before any permit required by this
article shall be issued, the annual
fee required therefor shall be paid

into the State Treasury, and the receipt for such payment filed in the office of the Food and Drug Commissioner. * * * * "

This section of our law has been by the 58th General Assembly of the State of Missouri expressly repealed and a new section 13139e enacted in lieu thereof, as found in Committee Substitute for Senate Bill No. 54 as passed by the 58th General Assembly. This section now provides:

"Before any permit required by this article shall be issued, the annual fee required therefor shall be paid into the State Treasury, and the receipt for such payment filed in the office of the Supervisor of Liquor Control. * * * * "

The general principle of law respecting this problem is found in 33 C.J. 534, wherein it is said:

"A licensee takes his permit subject to the contingency that there may be changes in the laws, adopted in the exercise of the police power, which will render his privilege less valuable or his responsibilities greater; and the fact of his holding a valid license, or of his having paid money for it, does not exempt him from the operation of statutes or ordinances subsequently passed imposing additional burdens upon licensed dealers, or subjecting their business to new restrictions or limitations. A license granted to sell liquor in a county is no defense to a prosecution for selling therein after the taking effect in the county of a general prohibitory law."

In the case of *Ex Parte Vaccarezza*, 106 S.W. 392, the Court had before it a similar problem. In that case the relator on May 28, 1907 obtained a license entitling him to pursue the business of retailing intoxicating liquors for twelve months. A new law was enacted which went into effect on July 12, 1907 and provided for new regulations for the sale

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of intoxicating liquors and declared that all laws or parts of laws in conflict therewith were expressly repealed. The Court held that relator had no authority to sell under his license obtained on May 28, 1907 after the passage of the new law on July 12, 1907, and said:

"We deem it unnecessary to pursue this subject further, for the authorities are too clear for discussion that, when the Baskin-McGregor bill went into effect on the 12th of July, it not only expressly repealed all former laws with reference to retail of liquors in Texas, as provided for under the terms of the act, but that the repeal by substitution is as equally certain."

CONCLUSION

In view of the foregoing, it is the opinion of this department that inasmuch as Section 13139e, Laws of Mo. 1933, page 258 has been repealed by Committee Substitute for Senate Bill No. 54 as passed by the 58th General Assembly and a new section (Section 13139e) enacted in lieu thereof by said Act of the General Assembly, all persons desiring to deal in the manufacture or sale of non-intoxicating beer as provided in Laws of Mo. 1933, page 256 as amended by Committee Substitute for Senate Bill No. 54 as passed by the 58th General Assembly must secure new permits to engage in said business from the Supervisor of Liquor Control of the State of Missouri.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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