INTOXICATING LIQUOR: License for the sale of intoxicating liquor cannot be issued for any place or premise within one hundred feet of a church or school building, measured from the nearest point or place described in license to nearest point of church or school building.

July 26, 1935

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

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office, which reads as follows:

> "Please favor this department with an an opinion on section 44-A-14, page 37 of the liquor control act.
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> "Does the 100 feet mentioned in this particular section mean from property to property, or from entrance to entrance?
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> "We shall be pleased to have your opinion on this subject as soon as possible."

Section 44-a-14 of the Liquor Control Act reads as follows:

> "No license shall be granted for the sale of intoxicating liquor, as defined in this act, within one hundred (100) feet of any school, church or other building regularly used as a place of religious worship, without the applicant for such license shall first obtain the consent in writing of the majority of the Board of Directors of such school, or the consent in writing of the majority of the managing board of such church or place of worship. The Board of Aldermen, City Council or other proper authorities, of any incorporated City, town or village, may by ordinance, prohibit

> the granting of a license for the sale of intoxicating liquor within a distance as great as three hundred (300) feet. In such cases, and where such ordinance has been lawfully enacted, no license of any character shall issue in conflict with such ordinance while such ordinance is in effect."

We fail to find from a review of the authorities that a Statute worded exactly as section 44-a-14, supra, has ever been construed. Similar Statutes have been construed, and a review of the decisions construing same may tend to assist us in arriving at a correct construction of the Missouri Statute.

In the case of Lanning v. Board of Excise Commissioners, 76 N. J. Law, l. c. 129 and 130, the Court said:

> "'No license shall be granted to sell spirituous, vinous, malt or brewed liquors by less measure than one quart * * * in any new place within two hundred feet of the curtilage of a church edifice * * * measured between the nearest point of the same and the nearest point of the building wherein such liquors, or any of them, are intended to be sold.'
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> "In the present case the license applied for was for a 'new place.' The building wherein the liquors are intended to be sold is, if the entire building is considered, within twenty-five feet of the 'curtilage of a church edifice,' or, if we consider that part of the building only which is devoted to hotel purposes, within one hundred and fifty-six feet of such curtilage.
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> "But it is contended by the prosecutor that he is relieved of the inhibition of the statute by the fact that the entrance to the hotel is more than two hundred feet distant from the church curtilage.
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> "We see no force in this contention.

> "The purpose of the legislature seems to have been clearly expressed in language unambiguous and definite. It is that no license shall be granted in a new place within two hundred feet of the curtilage of a church measured between the nearest point of the same and the 'nearest point of the building wherein such liquors are intended to be sold.' "

In the case of People v. Lammerts, 40 N. Y. S. 1107, the Court construed a Statute prohibiting the sale of intoxicating liquor in premises within two hundred feet of a building occupied by a church, the Court passing on the question of whether the distance prohibited by the Statutes was measured from the church or from property owned by the church, at l. c. 1110 said:

> "It does not seem to me, however, that the conceded fact that a church society owns property within 200 feet, upon which no building has been erected, is within the prohibition. The language of the statute is, 'within two hundred feet of a building occupied exclusively as a church'; and, as there is no building there, it cannot be, and is not, occupied as a building for a church, and hence the language of the statute has no application to a case of this kind."

From the above it would seem that a prohibition against liquor being sold in a place within a prohibited distance of a church, or a building used for a church, applies to the church building and not to the property owned by the church.

In the case of In Re Place, 50 N. Y. S. 640, the Court construed the following Section:

> "Sec. 43. No person or persons who shall not have been licensed prior to the passage of this act, shall hereafter be licensed to sell strong or spirituous liquors, wine, ale and beer

> in any building not used for hotel purposes, and for which a license does not exist at the time of the passage of this act, which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as a church or a school-house. The measurements shall be taken between the principal entrances of the buildings used for such church or school purposes and the place for which an application for a license has been made.' "

Although the above section provides that the measurements shall be taken between the principal entrance of the buildings used for such church or school purposes, and the place for which an application for a license has been made, the Court at l. c. 644 said:

> "I think it cannot be successfully contended, under any of these acts, that, in case a license existed authorizing a person to sell liquor just outside of the prescribed limits, he can, by renting an adjoining building within 200 feet of a church, and cutting an opening between them, become entitled to a license to sell liquors in the buildings so united, the entrance to which is, as in this case, within less than 200 feet of a church."

In the case of In Re Finley, 110 N. Y. S. page 71, the facts were as follows: The Liquor Tax Law of New York forbid the traffic in liquor in any place on the same street and within two hundred feet of a building occupied exclusively as a church or school house. The measurements were to be taken between the principal entrances of the school or church, and the place for which the application for a license had been made. A saloon was situated on the corner of Fifth Avenue and a cross-street. On the Fifth Avenue side, and within two hundred feet of a church were large double doors which had been used as a main entrance under a previous license, but had since been glassed over and a small side door on the cross-street, not within two hundred feet of the church was used as the only entrance. The Court on passing on said facts at l. c. page 72, said:

"Contrary to the contention of the respondent, the liquor tax law is to be construed liberally, that it may accomplish the purposes for its enactment. People ex rel. Cairns v. Murray, 148 N. Y. 171-175, 42 N. E. 584. There I consider the attempted closing of the main entrance of the saloon in question on Fifth avenue and the opening of the side door on Seventy-Sixth street a mere subterfuge, which the court should brush aside. The respondent's place where he is trafficking in liquor is situated on the corner of Fifth avenue and Seventy-Sixth street, in the borough of Brooklyn. When a previous license for this place was revoked and canceled by the court because of the failure to procure the requisite consents from dwelling house owners, the main entrance to the saloon was on Fifth avenue. Since then, and prior to the issuance of the certificate here sought to be revoked, this main entrance, consisting of large double doors, has been glassed over, the show windows on each side of the doorway being continued so as to pass over or in front of the door, and the small side door on Seventy-Sixth street is now used as the only entrance. The point to all this is that the entrance on Fifth avenue is within 200 feet of the property of the Bay Ridge Presbyterian Church, while the side door is beyond that limit. That the window extension is but a temporary closing of the Fifth avenue entrance, and a mere evasion of the law, is quite evident from the exhibit, which shows the main door or entrance still open and ready for use and men standing in the doorway. The entrance is not permanently blocked up, and appearance indicate that it was not meant to be. I therefore, for the purposes of this case, consider the entrance to be on Fifth avenue, and the distance of 200 feet to be measured from that doorway."

In the case of In Re Fleming, 38 N. Y. S. at l. c. page 610, it was said:

> "Upon the return to a writ of certiorari to review the action of the excise board in refusing a liquor license to the relator, the facts are not in dispute, and the controversy involves only the construction of this provision of the statute, namely: 'No person * * * shall be licensed to sell strong or spirituous liquors, etc., in any building * * * which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as * * * a schoolhouse' (Laws 1893, c. 480, Sec. 43); the distance to be ascertained by measurement from the center of the nearest entrance of such building to the center of the nearest entrance of the place for which the license is solicited. In view of its obvious policy in protecting the school against the evil influences of the saloon, the statute should be so expounded as to accomplish its benign intent, and to that end be accorded a literal or a liberal interpretation as may most effectually avert the apprehended mischief. People v. Murray, 148 N. Y. 171, 173, 42 N. E. 584; People v. Excise Board, 7 Misc. Rep. 415, 417, 27 N. Y. Supp. 983. The prohibition is explicit and imperative that no license is allowable for a saloon on the same street and within 200 feet of a schoolhouse. In this instance the schoolhouse and the saloon are on Fifty-Eighth street, and are separated by less than the requisite distance. The case, then, is within the terms of the enactment. But the relator insists that, as the entrance to the saloon is on Sixth avenue, the actual predicament is not within the policy of the law. Were the court authorized, upon pretense of construction, to nullify a plain and peremptory provision of the statute by imputing to the legislature a meaning

> contradictory of its language, still, I do not precsive that the situation is exempt from the evil against which the enactment is a studious safeguard. The schoolhouse and the saloon are on the same street, and the entrance to the latter, though on another street, is still within the prohibited proximity. That entrance may be out of view, but access to the saloon is not the less easy and inviting, and I cannot say that the scenes of vice and disorder of which it may be theprovocation will not be of disturbance and detriment to the inmates of the schoolhouse."

The case of Greenough v. Town Council of Warwick, 31 R. I. 559, was an action attacking the validity of a liquor license issued by the Town Council on the ground that said Town Council had no right or jurisdiction to issue said license, because the building in which the liquor was to be sold was located within two hundred feet, measured by a public traveled way, of the premises of a school. The licensee denied the charge and the action was unsuccessful because of failure of proof. The Court, however, in passing upon what constituted the premises of a school, at l. c. page 561, said:

> "The premises of a public or parochial school can be neither more nor less than the duly constituted authorities, having jurisdiction in the matter, may see fit to appropriate for that purpose, and the same may be abridged or enlarged by them in their discretion. For example, the premises may consist of one or more rooms in a building, or of the entire building itself with no additional grounds; or the land, whereon several buildings have been erected by the owner thereof, may be apportioned as premises appurtenant to the several buildings in such proportion as the owner may deem proper, or may be left to be used in common as appurtenant to the several buildings thereon at the will and pleasure of the owner. However it may be, it is a matter susceptible of proof, and ought not to be left to conjecture."

In the case of Commonwealth v. Jones, 142 Mass. the Court at l. c. page 574, 575 and 576 stated the facts and law as follows:

> "This case presents the question as to the construction of the St. of 1882, c. 220, Sec. 1, which is as follows: 'No license. . . . shall be granted for the sale of intoxicating liquors in any building or place on the same street within four hundred feet of any building occupied in whole or in part by a public school.' The defendant's license authorized him to sell 'at the West Stockbridge House, northeast room, first floor, known as the Campbell Hotel, in said West Stockbridge.' No part of this northeast room was within four hundred feet of the school house. But portions of the Campbell Hotel, in which was the licensed room, were within four hundred feet of the schoolhouse.
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> "The language of the statute is plain. It does not use the word 'room,' or 'tenement,' but 'building.' Its apparent object was to prevent the sale of liquor in any building on the same street with a public school-house, and within four hundred feet of it. If the defendant sold intoxicating liquors in the northeast room of the Campbell Hotel, and the Campbell Hotel was within four hundred feet of a public school-house and on the same street with it, then his license to sell intoxicating liquors in such northeast room would be no defence."
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> "Whenever the school-house and the building in which a license is granted are situated upon the same street, whether close to the street or some distance from it, the four hundred feet between them are to be determined by measuring the nearest point of each house to the other. This will determine the distance required by the statute."

From a reading of the above cases it is apparent that the Courts have uniformly held that the exception in respect to churches and schools should be liberally construed in their favor, and strictly construed against applicants for licenses within the proscribed distance, so as to prevent the mischief aimed at by the limitation.

The above cases, however, are of little help in construing the Missouri Statute for the reason that said decisions are based upon Statutes containing provisions not found in the Missouri Law. For example, theStatute in the New York cases, supra, provided that the measurements shall be taken between the principal entrance of the buildings used for such churhh or school purposes, and the place for which an application for a license has been made. The New Jersey Statute construed in the case of Lanning v. Board of Excise Commissioners, supra, provided that no license to sell intoxicating liquor shall be granted to any place within two hundred feet of the curtilage of a church edifice, the distance to be measured between the nearest point of the same and the nearest point of the building wherein such liquors are intended to be sold. The Statute construed in Greenough v. Town Council of Warwick, supra, provided that no license shall be granted for the sale of liquors in any building or place within two hundred feet measured by any public traveled way of the premises of any public or parochial school. The Mass. Statute construed in Commonwealth v. Jones, provided that no license shall be granted for the sale of intoxicating liquor in any building or place on the same street within four hundred feet of any building occupied by a public school.

Section 44-a-14, supra, merely provides that no license shall be granted for the sale of intoxicating liquor within one hundred feet of any school, church or other building regularly used as a place of religious worship, unless the applicant shall first obtain the consent, in writing, of the majority of the Board of Directors of such school, or the consent, in writing, of the majority of the managing board of such church or place of worship. The Statute does not say that a license cannot be issued for the sale of intoxicating liquor within one hundred feet of the property, premises or curtilage of such school or church, neither does the Statute direct that the prohibited distance shall be measured by the nearest public traveled way, nor from entrance to entrance; nor from the nearest point of the building wherein liquor is sold, to the nearest point of

the church or school, or premises, or curtilage of such church or school. To hold Section 44-a-14 contained any of the above provisions would be writing a provision in the Statute not therein contained, something which we have no authority to do.

Section 20 of the Liquor Control Act, however does provide as follows:

> "Every license issued under the provisions of this Act shall particularly describe the premises at which intoxicating liquor may be sold thereunder, and such license shall not be deemed to authorize or permit the sale of intoxicating liquor at any place other than that described therein."

By reading Section 20 and Section 44-a-14 together, it is plain that the Legislature intended that no license should be issued for the sale of intoxicating liquor on any premises or place within one hundred feet of any school or church or other building regularly used as a place of religious worship, unless the applicant for such license shall first obtain the consent, in writing, of the majority of the managing board of the directors of such school or church. It is also apparent from the wording in Section 44-a-14 that the prohibition against issuing a license for the sale of intoxicating liquor within one hundred feet of a school or church or other building means that the license cannot be issued for the sale of intoxicating liquor at a place within one hundred feet of a church building or school building, and does not mean that a license may not be issued for a place within one hundred feet of the property of such school or church.

From the above we have arrived at the conclusion that no license can be issued for the sale of intoxicating liquor at any place or for any premises within one hundred feet of any school or church building. The Legislature, however, failed to direct from what points the distance is to be measured. In the case of Evans v. United States, 261 Fed. 902, the Court at l. c. page 904, said:

> "Distance is to be measured in a straight line in a horizontal plane, unless there is a clear indication that another mode of measurement is to be adopted. 9 Am. & Eng. Encyc. of Law, p. 614. Distance is a straight

line along the horizontal plane from point to point. It is measured from the nearest point of the one place to the nearest point of the other. 18 C. J. 1287."

CONCLUSION.

In view of the above it is the opinion of this Department that no license for the sale of intoxicating liquor can be issued for any place or for any premises, described in the license, within one hundred feet of any church or school building, unless the applicant shall first obtain the consent, in writing, of the majority of the Board of Directors, of such school, or the consent, in writing, of the majority of the managing board of such church or place of worship. It is our further opinion that the prohibited distance is to be measured in a straight line from the nearest point of the place or premises described in the license, to the nearest point of such church or school building or other building regularly used as a place of religious worship.

The Board of Aldermen, City Council, or other proper authorities of any incorporated city, town or village may, by ordinance, prohibit the granting of a license for the sale of intoxicating liquor within a distance as great as three hundred feet of a church or school building. The distance specified by a city should be measured in the same manner as pointed out above for the measurements of the distance prohibited by the Statute.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
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