NON-INTOXICATING BEER: City ordinances requiring applicant to be property owner is in conflict with State law on said subject, and void.

January 25, 1936 1-27

FILED 10

Mr. Wallace I. Bowers
Chief Clerk
Department of Liquor Control
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

> "Please furnish this department with an opinion on the following subject:
>
> "Does a City Council, under the provisions of section 13139-E of the non-intoxicating liquor laws of the State of Missouri, have the power to pass an ordinance requiring applicants for 3.2% beer permits to be property owners before granting said applicants 3.2% beer permits?"

Section 13139-e of the Non-intoxicating beer Law, Laws of Missouri 1935, page 396, gives the proper authorities of incorporated cities, towns and villages the right to charge for licenses issued to manufacturers, brewers, wholesalers and retailers of non-intoxicating beer within their limits, and to make and enforce ordinances for the regulation and control of the sale of non-intoxicating beer within their limits, not inconsistent with the provisions of the Non-intoxicating Beer Act. Said section reads, in part, as follows:

> "The Board of Aldermen, City Council or other proper authorities of incorporated cities, towns and villages including the City of St.Louis may charge for licenses issued to manufacturers, brewers, wholesalers, and retailers of non-intoxicating beer within their limits,which charge for licenses shall not exceed one and one-half times the amount charged for a state license, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of non-intoxicating beer within their limits, not inconsistent with the provisions of this Act, and provide penalties for the violation thereof.* * * * * * "

The only qualifications required of an applicant to sell non-intoxicating beer are found in Section 13139-z-17, Laws of Missouri 1935, page 400, which reads as follows:

> "Before any permit authorized by this article other than a manufacturers' permit shall be issued and delivered to any applicant therefor, such applicant shall take and subscribe to an oath that he will not allow any intoxicating liquor of any kind or character,including beer having an alcoholic content in excess of 3.2 per cent by weight, to be kept, stored or secreted in or upon the premises described in such permit, and that such applicant will not otherwise violate any law of this state while in or upon such premises."

In the case of St.Louis v. Tielkemeyer 226 Mo. l. c. 140, the Court said:

> "It is insisted by appellant that the city ordinance in question is void because inconsistent with the State statute on the same subject.
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> "The city of St.Louis has express authority under its charter 'to license, tax and regulate . . . saloons, beer houses, tippling houses, dramshops and gift enterprises.' (Art.3,sec.26,clause 5.)
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> "The State, however, has the sovereign power to regulate those matters and its authority being paramount, it follows that a city ordinance is not valid if it is in conflict with the law of the State on the same subject."

In the case of State ex rel. v. McCammon 111 Mo. App. l. c. 630,631, the Court said:

> "We are of the opinion that the charter powers relied upon do not confer authority upon the city to overturn the general law on the subject of dramshops. Indeed, the charter itself, as above quoted, shows that the city has no power to pass ordinances on any subject which are repugnant to the laws of the State. So therefore when the State law says that a license shall be granted on the petition of two-thirds of the inhabitants of a block, the board of aldermen have not the authority to say that there shall be a petition of two-thirds of the entire city. Though the city is authorized to regulate a dramshop, it cannot regulate it in those particulars which would be inconsistent with the regulations made by the State."

And, further, at l. c. 631, 632, it was said:

> "'The powers conferred upon a municipal corporation must be exercised in conformity to the general laws of the State, unless it is clear that the exclusive control of the subject is given to the municipality or that the general law is to be superseded or suspended by the charter. A statute granting authority to a city to pass ordinances in relation to the liquor traffic does not repeal the general laws on that subject. The rule is that the municipal ordinances cannot set aside, limit or enlarge the statute law of the State, unless its power to do so can be shown in express terms or by necessary implication.' And again at section 224 the same author says:
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> "'Whenever a change of policy takes place in the State on the subject of its liquor legislation, by the adoption of a different system - as when general prohibition, or prohibition for particular localities is enacted by a constitutional amendment of general statute, or when the Legislature provides a uniform and general system for the licensing of the traffic - this has the effect to repeal all inconsistent provisions in municipal charters and the ordinances adopted under them.'. "

In view of the above, it is the opinion of this department that an ordinance requiring applicants for 3.2% beer permits be property owners would be in conflict with Section 13139-z-17, supra, and therefore void because inconsistent with the State law on the same subject.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

JET:LC