LIQUOR: Failure to keep an orderly house has not been made a punishable crime by Section 13139-z-24 of the Non-intoxicating Beer Laws.

February 15, 1940

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Honorable Fred C. Bollow
Prosecuting Attorney
Shelbina, Missouri

Dear Sir:

We have received your letter of February 10th, which reads in part as follows:

> "I should appreciate an opinion from your department as to whether or not a criminal prosecution will lie for a violation of the provisions of Sec. 13139-z-24 of the Non-intoxicating beer laws of the State of Missouri."

From another communication from you, we learn that the exact question you have in mind is whether or not, under the laws governing the sale of 3.2% or non-intoxicating beer, a dealer can be convicted of the offense of not keeping at all times "an orderly place or house." In other words, under the non-intoxicating beer act, is it a crime to keep a disorderly house?

In the 3.2% beer laws, the only mention of either an orderly or disorderly house is contained in Section 13139-z-24, Laws of Missouri 1935, page 402. This section reads as follows:

> "Whenever it shall be shown, or whenever the Supervisor of Liquor Control has knowledge that a dealer licensed hereunder, has not at all times kept an orderly place or house, or has violated any of the pro-

> visions of this act, said Supervisor of Liquor Control shall revoke the license of said dealer, but the dealer must have ten (10) days' notice of the application to revoke his license prior to the order of revocation issuing, with full right to have counsel, to produce witnesses in his behalf in such hearing and to be advised in writing of the grounds upon which his license is sought to be revoked."

The legislature did not define what it meant by a disorderly house or what it meant by the failure of a dealer to keep an orderly place or house. No one can read the above statute and determine with any certainty whether or not he has violated the law or what act or acts constitute a violation of said section in order to subject him to a criminal prosecution.

The Supreme Court of Missouri en b anc in the recent case of Diemer vs. Weiss 122 S. W. (2nd) 922, had a similar situation before it. This case was an action in habeas corpus. The petitioner was deprived of his liberty by the city marshal of Kirkwood, who had custody of him under a commitment by the city court of said city. He was convicted in said court under a section of an ordinance entitled "offense against public order and peace". The ordinance and the reasoning of the court are as follows:

> "The first paragraph of Sec. 490a follows:
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> 'Sec. 490a. Picketing - prohibited when - penalty. It shall be unlawful within the City of Kirkwood, Missouri, for any person, persons or members of any voluntary organizations, or agents of any corporation, to interfere with the operation of any established business or businesses or with any working agreement established between

any employer and employee engaged in any business within the City of Kirkwood, whether said employer operates as a firm, association, individual, corporation or co-partnership, by what is commonly known as picketing such employer or his place of business, or by any unlawful method intended to disrupt or affect the existing established relations between such employers and employees, or to harass, coerce or damage such employer or his or its business; provided, however, that this Ordinance and Section shall not apply in the event of an existing strike engaged in by all or part of the employees of any such business.'

The said paragraph may be divided as follows:

(1) 'It shall be unlawful * * * for any person * * * to interfere with the operation of any established business * * * or with any working agreement established between any employer and employee engaged in any business * * * by what is commonly known as picketing such employer or his place of business.'

(2) 'It shall be unlawful for any person * * * to interfere with the operation of any established business or with any working agreement established between any employer and employee engaged in any business by any unlawful method intended to disrupt or affect the existing established relations between such employers and employees."

(3) 'It shall be unlawful for any person * * * to harass, coerce or damage such employer or his or its business.'

* *

Petitioner contends that the ordinance is vague, indefinite and uncertain, and for

that reason invalid. The rule is stated as follows:

'When the language of an act appears on its face to have a meaning, but it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate, it is simply void; for if no judicial certainty can be settled upon as to its meaning, courts are not at liberty to supply the deficiency or make the statute certain. But legislation cannot be nullified on the ground of uncertainty, if susceptible of any reasonable construction that will support it.' 26 Am. and Eng. Ency. Law, 2d Ed., 656.

'Where the statutory terms are of such uncertain meaning, or so confused, that the courts cannot discern with reasonable certainty what is intended, they will pronounce the enactment void.' Statutory Crimes, 3d Ed., in the third subdivision of section 41.

'Statutes and ordinances which fix crimes, or quasi crimes, should so fix them that there could be no uncertainty. They should be so worded that one could read them, and know whether or not he was violating law. They should not be so worded as to leave their substantive elements to the caprices of either judge or jury. In other words the law should be complete and definite. What would be "reasonable effort" under this law is left a question for the court or jury. What in the minds of one court or jury might be "reasonable effort" might not be so considered by another court or jury. Each trial tribunal would be making its own ordinance. This willnot do for a law or ordinance criminal

in character.' Taft v. Shaw, 284 Mo. 531, loc. cit. 544, 545, 225 S. W. 457, loc. cit. 461.

'A statute cannot be held void for uncertainty, if any reasonable and practical construction can be given to its language. Mere difficulty in ascertaining its meaning or the fact that it is susceptible of different interpretations, will not render it nugatory. Doubts as to its construction will not justify us in disregarding it. It is the bounden duty of the courts to endeavor, by every rule of construction, to ascertain the meaning of, and to give full force and effect to, every enactment of the general assembly not obnoxious to constitutional prohibitions.

'It is equally true that a mere collection of words can not constitute a law; otherwise the dictionary can be transformed into a statute by the proper legislative formula. An act of the legislature, to be enforceable as a law, must prescribe a rule of action, and such rule must be intelligibly expressed.' State ex inf. Crow v. Street Ry. Co., 146 Mo. 155, loc. cit. 167, 168, 47 S. W. 959, loc. cit. 961."

* *

"In this connection it should be stated that 'in creating an offence the legislature may define it by a particular description of the act or acts constituting it, or may define it as any act which produces, or is reasonably calculated to produce certain defined or described results'. 8 R.C.L. p. 57.

It is clear that divisions Nos. 2 and 3 of said paragraph neither condemn an act by particular description nor condemn all acts which produce a certain described result.

> Furthermore, division No. 2 simply ordains that it is unlawful to do an unlawful act. Division No. 3 simply ordains that it is unlawful to 'harass, coerce or damage'. The words 'harass, coerce or damage' are not defined and the ordinance 'furnishes no criterion by which the questions of harassment, coercion and damage can possibly be determined.' * * * * * * * * * * * * *
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> Thus it also appears that picketing is defined in Sec. 490b as mere solicitation and request. In this situation it cannot be determined from Secs. 490a and 490b, or from any part of the same, what offence was intended to be created. The rule is stated as follows:
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> 'An ordinance of a regulatory nature must be clear, certain and definite so that the average man may, with due care, after reading the same, understand whether he will incur a penalty for his actions or not.' 19 R.C.L. p. 910.
>
> In other words, the said sections are vague, indefinite and uncertain, and for that reason void. It follows that it is unnecessary to consider the constitutional questions presented by the record.
>
> The petitioner should be discharged from the custody of the city marshal of Kirkwood. It is so ordered."

Applying the above principles to Section 13139-z-24, supra, it appears that said section is a law of a regulatory nature but is not "clear, certain and definite so that the average man may, with due care, after reading the same, understand whether he will incur a penalty for his actions or not;" that while "the language of the act appears on

its face to have a meaning * * it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate;" that since "no judicial certainty can be settled upon as to its meaning, courts are not at liberty to supply the deficiency or make the statute certain." The legislature has nowhere defined the meaning of the words "orderly house" or conversely a "disorderly house". Therefore, no specific offense has been prescribed which could result in a criminal prosecution.

We are not attempting to say that the Supervisor of Liquor Control can not revoke or suspend a license because of a disorderly house. Neither are we attempting to say that a dealer can not be tried criminally for maintaining a gambling house under the laws prohibiting gambling, or for maintaining a bawdy house under the laws prohibiting brothels, even though the existence of either in a dealer's place of business might, in a broad sense, be considered a disorderly house. We are only saying that the term "orderly house" is not sufficiently defined, nor is it precise or intelligible enough to constitute a crime in itself under the terms of the Non-intoxicating beer laws.

CONCLUSION

We conclude, therefore, that under the terms of Section 13139-z-24 of the Non-intoxicating beer laws, Laws of Missouri 1935, page 402, and that section only, a dealer can not be criminally prosecuted for failure to keep an orderly house.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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