LIQUOR CONTROL ACT:
BUILDINGS USED AS PLACES OF RELIGIOUS WORSHIP:

Buildings used by various religious denominations for religious worship which denominations do not have managing boards to manage such buildings, are not buildings regularly used as places of religious worship, as provided in Sec. 44-a-14, Laws of Mo. 1935, p. 285.

August 17, 1938

FILED
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Mr. A. L. Burns
City Attorney
Marceline, Missouri

Dear Sir:

This is in response to yours of August 15th requesting an opinion from this department based upon the following question:

> "A petitioner prays a license to sell 5% beer in Marceline. There is located within the prohibited distance provided by statute and by ordinance from the place at which the license is applied for a regular undertaking parlor and connected with it is a chappel used for funeral service. There has also for several months last past, been held preaching, praying, bible study and song service. The question is raised that this constitutes a building in which religious service is regularly held. The undertaking business has been located in this building for several years, and the service and worship for several months. The service is had by many denominations and is apparently not restricted to any particular church or creed. What I desire is an opinion as to whether this is a building in which worship is regularly held within the provisions of the statute."

Section 44-a-14, Laws of Missouri, 1935, page 285, provides 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."

Upon the question that you have submitted, we fail to find where this statute has been construed, or where a statute with similar provisions in it relating to the location of liquor sales places near churches and schools has been construed. It seems that your question may be determined by what is meant in the act by the term "other building regularly used as a place of religious worship."

Vol. 15 R. C. L., Sec. 137, page 373, states the rule as to what constitutes a church as follows:

> "In applying the prohibition against sales near churches, great liberality is exercised, and the rule of construction usually adopted is said to favor the religious institutions and not the traffickers in liquors, to the end that the protection be extended to all the multifarious denominations and societies, irrespective of their particular tenets or creed, and no matter with what ceremony or lack of it their faith may be evinced.

> Any structure used principally for religious worship and Bible study is included although some of its rooms may be used by societies incidental to the church, or closely allied to its principles, or by individuals connected with or peculiarly eligible to membership in the church; and it is not necessary that the organization be incorporated. In the application of such legislation, however, the courts properly refrain from including what in reason cannot and in common conception ordinarily is not regarded as a church. The restraint is usually held not to apply to places used occasionally for preaching, or a building used by an organization devoted to the reformation of fallen women, unconnected with any church, or a building occasionally used for entertainments for the benefit of a church, or used by an unorganized body as a mission for Bible study and meetings, when most of the building is used for residential and commercial purposes. Furthermore it is held that such a provision does not apply to church property on which the construction of an edifice has been begun but not completed, although it is intended to be occupied as a church, except where the statute expressly names the church; and premises leased, but not yet occupied for church purposes, are especially beyond the operation of the statute, when the saloon in question was licensed before the leasing of the premises. But it has been held that the creation of a 'dry' area surrounding a named church attaches the prohibition to that area, and that the operation of the act is therefore not affected by the removal of the church."

This question is also treated in the case of In re Finley, 110 N. Y. S. 71, 73, wherein the court said:

"While I believe that the liquor tax law should be liberally construed in favor of schools, churches, and homes, and the liquor trafficker strictly held to the provisions which permit him to carry on such business in our midst, yet the court is bound to give those provisions a reasonable interpretation, and not construe them beyond their fair meaning or extend prohibitions to cases and situations which the law has not covered. In other words, the court can and should merely declare and enforce what the statute has enacted. Section 24, subd. 2 (Laws 1896, p. 66, c. 112, as amended by Laws 1897, p. 225, c. 312), specifying the places in which traffic in liquor shall not be permitted, includes any place which shall be on the same street and within 200 feet of a building occupied exclusively as a church or schoolhouse. On Seventy-Sixth street, and within 200 feet of the Fifth avenue entrance to this saloon, is a building purchased in July, 1907, by the Bay Ridge United Presbyterian Church for church purposes. It is for me to determine whether this building is used exclusively as a church within the meaning of the above statute. The house was built for and has been used as a frame dwelling house very much like the other homes and dwelling houses to be found in the suburbs, and its structure has not been changed since the purchase. The parlor floor is used for the services of the church and Sunday school, while the pastor or minister in charge lives with his family on the second floor, keeping house with the usual accommodations and conveniences for that purpose. The third floor is occupied by a woman with her children, who more or less looks after the work to be done on the premises. The building was built for a dwelling house, not for a church, and its construction has not been changed. Two families now live in it, and although the property is owned by a church organization and the parlor floor used for the usual and

> regular church and Sabbath school services, yet it is as much a dwelling as a church, and cannot be considered as used exclusively for the latter purpose without twisting the word 'exclusively' from its usual meaning. The word 'exclusively' means something, as was said in the Matter of Rupp, 55 Misc. Rep. 314, 106 N. Y. Supp. 483, which recognized that, when a building was used part as a church and part as a dwelling, the protection of the statute did not apply to it."

We also find that in the case of In re George et al. v. Board of Excise of City of Elizabeth, 63 Atl. 870, this question was discussed. Although the facts in that case were not like the facts in this case, yet the case is pertinent to the question here submitted, and the court held:

> "The fact that an organized body of persons known as 'Faith Curists,' who believe in God and Christ, hold meetings and Bible study and the religious and secular instruction of the young in a building, the upper part of which is occupied as a dwelling and the downstairs rear portion of which is used for storage purposes, does not constitute such building or such body of persons 'a church,' within the meaning of P. L. 1905, p. 42, Chap. 21, so that an inn and tavern may not be licensed as 'a new place' within the limit of 200 feet 'ascertained by measurement from the nearest point of the church edifice.'"

The Missouri act requires the applicant for a license to obtain the consent, in writing, of the managing board of a church or place of worship which is within the prohibited zone, before he can be granted the license.

Your statement of facts indicates that the building in which the religious services are conducted is primarily used as an undertaking parlor; that for the past few months the services have been held in this building by many

denominations, and its use is not restricted to any particular church or creed.

As to what the lawmakers meant by the term "regularly used as a place of religious worship," we are unable to determine from the statute. However, the term "regularly" is defined in Words and Phrases, (3 Ed.), Vol. 6, page 651, as follows:

> "Implying uniformity, continuity, consistency, and method, and excluding the idea of occasional, accidental, incidental, or casual use."

Your request indicates that the religious worship in this building is conducted by many denominations. The act requires the applicant to obtain the consent of the managing board of such church or place of worship. This clause contemplates that the building regularly used as a place of worship shall be used by a church organization which has a managing board. Your letter does not indicate whether or not such a board exists, but as the building is primarily used as an undertaking parlor, we conclude that there is no managing board, but that the owner of the premises permits the services to be held in this building by various denominations when such services do not interfere with his undertaking business. From the facts which you have submitted, it also appears that the religious services are not continuously, consistently and methodically conducted in the building by any one religious denomination, but that such building is used occasionally or casually by the various denominations.

It is a well known fact that on account of crowded conditions in church buildings, the Sunday School and Bible classes are sometimes held in courthouses or other buildings about a city, but we do not think that the lawmakers contemplated that such building would be classed as a building used regularly as a place of religious worship, which would prohibit locating a place of selling intoxicating liquor within a certain distance therefrom. We think that the lawmakers had in mind, when they referred to "other building regularly used as a place of religious worship," such building as a particular religious denomination may have control over and which building is governed through its board of managers. We do not think that the building and the use

thereof which you have described in your request comes within that class.

CONCLUSION

We are, therefore, of the opinion that the use of the building mentioned in your request is not such a continuous and consistent use for religious worship that it could be classed as a building regularly used for religious worship, but that such use is more in the class of occasional or casual use. That being the case, the applicant for the license to sell intoxicating liquor would not be required to obtain the written consent of the board of managers, if any, of those worshiping in the building which you have mentioned in your request.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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