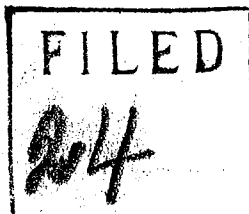


DOUBLE JEOPARDY:
FORMER JEOPARDY:
LIQUOR SUPERVISOR:
CRIMINAL LAW:

A hearing by the Supervisor of Liquor Control to suspend or revoke a liquor license does not place the licensee in jeopardy of being deprived of his life or liberty, within the meaning of Article I, Section 19, Constitution of Missouri, 1945, and Section 556.240 RSMo 1949, and, therefore, said hearing is not a bar to subsequent criminal prosecution for the same act in violation of the liquor control laws.

June 8, 1954



Honorable Edward L. Dowd
Circuit Attorney
Municipal Courts Building
St. Louis, Missouri

Dear Sir:

By your letter of May 21, 1954, you requested an official opinion as follows:

"The St. Louis press yesterday published a report indicating that a charge of illegal possession of liquor against a _____ was dismissed by St. Louis County Magistrate _____."

"The dismissal of the prosecution according to the press reports was based on Magistrate _____ finding that because the defendant's 5% beer license had been suspended after State Liquor Control agents found spirituous liquors on the premises, that the imposition of the penalties provided by law for such illegal possession would constitute 'double jeopardy'. Apparently the Magistrate's theory in dismissing the case was that the defendant had already been punished by the suspension of the license."

"It has always been the law to my knowledge that a liquor license is a privilege granted by the State in pursuance of its regulatory powers of the distribution and sale of intoxicating liquors."

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"It would appear therefore that the suspension or revocation of a liquor license is not 'punishment' at all but rather is a mere withdrawal of a privilege the State was not obligated to grant in the first instance.

"This decision conflicts directly with the State Statutes and Supreme Court decisions. If it is to be the law, then the enforcement of liquor violations will become a farce. Yearly, the St. Louis Circuit Court Grand Jury indicts a large number of people under the same circumstances, and informations are issued by the Circuit Attorney's office based on exactly the same evidence that result in prosecution and conviction. I believe there is a serious conflict between the Supreme Court decisions and the Magistrate's ruling. Therefore, I am requesting an official opinion by your office as to whether or not our understanding of the liquor laws is correct, and particularly whether the grounds stated by the Magistrate in the dismissal ordered are supported by law. Because of the fact we have so many liquor cases now pending prosecution, I would appreciate an early reply."

The criminal prosecution of which you speak was apparently based on Section 311.270 RSMo 1949, paragraph 1, which reads as follows:

"1. It shall be unlawful for any person, holding a license for the sale of malt liquor only, to possess, consume, store, sell or offer for sale, give away or otherwise dispose of, upon or about the premises mentioned in said license, or, upon or about said premises to suffer or permit any person to possess, consume, store, sell or offer for sale, give away or otherwise dispose of, any intoxicating liquor of any kind whatsoever other than malt liquor brewed or manufactured by the method, in the manner, and of the ingredients, required by the laws of this state.

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Whosoever shall violate any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof by any court of competent jurisdiction shall be punished as in this chapter provided as to misdemeanors. Upon such conviction becoming final, the license of the person so convicted shall forthwith, and without other or further action, order or proceeding, be deemed to have been revoked, and shall by the licensee be forthwith surrendered to the supervisor and canceled."

The "double jeopardy" provision in the Constitution of Missouri, 1945, is Article I, Section 19.

"That no person shall be compelled to testify against himself in a criminal cause, nor shall any person be put again in jeopardy of life or liberty for the same offense, after being once acquitted by a jury; but if the jury fail to render a verdict the court may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the same or next term of court; and if judgment be arrested after a verdict of guilty on a defective indictment or information, or if judgment on a verdict of guilty be reversed for error in law, the prisoner may be tried anew on a proper indictment or information, or according to the law."
(Emphasis ours)

Section 556.240 RSMo 1949 makes the following provision:

"When the defendant shall be acquitted or convicted upon any indictment, he shall not thereafter be tried or convicted of a different degree of the same offense, nor for an attempt to commit the offense charged in the indictment, or any degree thereof, or any offense necessarily included therein, provided he could have been legally convicted of such degree or offense, or attempt to commit the same, under the first indictment."

The above provisions apply only to criminal prosecutions. 2200 J.S., Criminal Law, paragraph 240, pp.372-373. The

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constitutional provision was construed by the Supreme Court of Missouri in State v. Spear, 6 Mo. 644, 645, as follows:

"* * *By this provision I understand, that in all criminal prosecutions where a conviction would subject him to capital punishment, or would render him liable to be restrained from his personal liberty, an acquittal by a jury is a complete bar to any subsequent trial. * * *"

The "double jeopardy" provision does not apply to civil actions. State v. Muir, 164 Mo. 610, 65 S.W.2 85. Thus, in Donnelly v. Steele, 180 Fed.2d 1019, it was said that the petitioner was not placed in jeopardy twice for the same offense, because he had been sued for damages by the widow of the man he killed, and prosecuted and imprisoned for the same murder. Nor does the revocation of a liquor license bar a criminal prosecution for the same offense. 48 C.J.S., Intoxicating Liquors, par. 180, pp. 308, 309. Thus, in State v. Barnett, 111 Mo. App. 552, the St. Louis Court of Appeals made this statement concerning the revocation of a liquor license, and criminal prosecution, for the same act, l.c. 555, 556:

"County courts unquestionably have jurisdiction to revoke dramshop licenses in a proper case if the licensee has not kept an orderly house. R. S. 1899, sec. 3012. Therefore, the county court of Pemiscot county had jurisdiction of the subject-matter of the proceeding to revoke the license of Wm. H. Barnett. This proceeding was instituted on a properly verified information charging the defendant with keeping a disorderly house. To the argument that the county court revoked the license for the same offence acted on by the circuit court, and that the action of the county court was in a proceeding of which it had no jurisdiction, because a prior proceeding to forfeit on the same ground was pending in another court, our answer is that the proceedings in the two courts were entirely different. The cause pending in the circuit court was a criminal information charging Wm. H. Barnett with a district offence, to-wit: keeping a musical instrument in his saloon and permitting it to be played. The charge in

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the county court was keeping a disorderly house. Those two charges were distinct and the county court had jurisdiction of one and the circuit court of the other. But if the county court sustained the charge of keeping a disorderly house on proof of the same facts for which Wm. H. Barnett was convicted of an offence in the circuit court, this does not render the forfeiture by the judgment of the former tribunal, on a finding by it that a disorderly house had been kept, a nullity in this independent prosecution. * * *

In Barnett vs. County Court, 111 Mo.App. 693, the same court made this statement as to the rights of a liquor licensee, l.c. 706:

"Our conclusion is that the county court in revoking the license of appellant, acted in an administrative and ministerial capacity as the agent of the State, exercising the police powers thereof to the end that the business otherwise unlawful, should not be conducted in a manner contrary to the permit theretofore by it granted and that the proceeding contemplated by section 3012 which was had in this case by the county court is in no sense judicial for the reason that no right of life, liberty or property was therein involved nor adjudicated and that there was therefore no case or cause pending in the county court as is contemplated by the statute granting appeal therefrom to the circuit court.* * *

The proceedings before the Supervisor of Liquor Control is not a criminal prosecution. There is no information or indictment as required by Article I, Section 17, Constitution of Missouri, 1945, nor is said Supervisor vested with judicial power by Article V, Section 1, Constitution of Missouri, 1945. The Supervisor is not authorized to inflict punishment, nor is he authorized to deprive a person of his life or liberty, but may only revoke or suspend a temporary permit granted by the state. Therefore, the constitutional and statutory prohibition against double jeopardy is not applicable to a hearing before said Supervisor to suspend or revoke a license.

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CONCLUSION

It is, therefore, the opinion of this office that a hearing by the Supervisor of Liquor Control to suspend or revoke a liquor license does not place the licensee in jeopardy of being deprived of his life or liberty, within the meaning of Article I, Section 19, Constitution of Missouri, 1945, and Section 556.240 RSMo 1949, and, therefore, said hearing is not a bar to subsequent criminal prosecution for the same act in violation of the liquor control laws.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:lvd