LIQUOR CONTROL: Club holding 3.2 percent. Members thereof may not store intoxicating liquor in lockers on premises.

February 21, 1938

2-21

FILED
32

Mr. Joseph M. Garvey, President
Department of Police
St. Joseph, Missouri

Dear Sir:

This department is in receipt of your letter of February 3, 1938, in which you request an opinion as follows:

> "The Shrine organization of St. Joseph operates a golf and country club here in St. Joseph. In connection with their club house, they have a tap room in which they sell liquor. I informed them it would be necessary for them to obtain liquor licenses in order to sell liquor. They have no objection to buying the license, except that under the retail liquor license they would be compelled to close their tap-room on Sunday. Sunday is the day they entertain most of their guests.
>
> "I then suggested to them that they might obtain a 3.2 beer license and if any of the members wanted to drink something stronger than beer, they could build lockers which the members could rent and in which they could store liquor purchased from outside dealers for their personal use. This suggestion they have followed and accordingly purchased a 3.2 beer license in the name of the steward of the club.
>
> "Judge Sam Wilcox, of our Circuit Court, who is the potentate of the

club, informed me this morning that the affidavit on the back of the application requires the affiant to state that no liquor of any stronger alcoholic content than 3.2 will be kept or stored on the premises. The judge pointed out that the steward hesitated about signing such an affidavit because of the presence of liquor in the lockers.

"The affidavit seems to go somewhat further than the law, which provides that it shall be unlawful for any person holding a malt liquor license or permit and not holding a retail liquor dealer's license covering the premises described in said malt liquor dealer's license or permit to have or keep in or upon the premises any intoxicating liquor of any kind."

The question which you present, stated concisely, is: May the holder of the 3.2% beer permit of a club construct lockers in which members of the club may keep their own intoxicating liquors and not run contrary to the provisions of the Liquor Control Act, prohibiting the keeping of intoxicating liquor on the premises covered by a 3.2% beer permit?

Section 13139-h-1 of the Liquor Control Act (Laws of 1935, page 397) is in part as follows:

"Any person holding a permit under this article to sell non-intoxicating beer at retail, who shall have or keep or secrete in or about the premises described in and covered by his permit any intoxicating liquor of any kind or character * * * * * * * * * * shall be deemed guilty of a misdemeanor."

Section 13139-z-17 of the Liquor Control Act (Laws of 1937, page 536) is as follows:

> "Before any permit authorized by this article other than a manufacturer's or wholesaler's 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, or knowingly allow any other person to violate any law of this state while in or upon such premises."

Section 13139-z-21 of the Liquor Control Act (Laws of 1935, page 401) is in part as follows:

> "Any person holding a license to sell non-intoxicating beer only who shall sell, give away or otherwise dispose of, or suffer the same to be done in, upon or about his premises any malt liquor containing alcohol in excess of three and two-tenths per cent (3.2%) by weight, or any other intoxicating liquor of any kind or character, shall be deemed guilty of a felony."

In State v. Robinson, 163 Mo. App., l.c. 226, it is said:

> "In the interpretation of statutory language the meaning must be given that is most consonant with the policy or obvious purpose of the statute."

Construing the above sections together, it is apparent that the obvious purpose is to prevent persons licensed under the non-intoxicating liquor laws of this state from handling or having about his premises, either

directly or indirectly, intoxicating liquor. The only construction consistent with this purpose and which must be adapted here is as follows: A person holding a 3.2% beer permit must not, directly or indirectly, under any circumstances, have, keep, secrete, sell or otherwise dispose of intoxicating liquor, or suffer the same to be done in, upon or about the premises covered by his permit.

The construction of lockers on these premises in which members of the club will keep their own liquor would be but an attempt to circumvent the obvious purposes and terms of the statutes. A person may not do by indirection that which is prohibited from being done directly.

CONCLUSION

Therefore, it is the opinion of this department that when a club or association, or some person as steward of said club or association, has obtained a 3.2% beer permit, the members of said organization may not keep intoxicating liquor in lockers for that purpose on the premises covered by said permit. The doing of this subjects the licensee to prosecution, as well as being grounds for the revocation of his permit.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

LLB:VAL