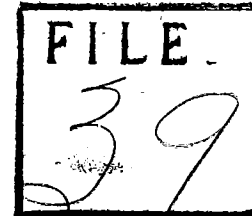


INJURIOUS LIQUOR: Rathskeller may be licensed if interior
RATHSKELLER: visible from entrance or approach,
LICENSE: though not visible from street.

December 31, 1941

Honorable W. G. Henderson, Supervisor
Department of Liquor Control
Jefferson City, Missouri



Dear Sir:

This is in reply to your request for an official opinion by your recent letter, which is in the following terms:

"I respectfully request an opinion upon the following subject:

"Do I have the authority under the provisions of Section 21a to issue a permit to sell 5% beer covering premises commonly referred to as a rathskeller? This Section is not clear as to whether or not this type of beer, as mentioned above, located in the basement is permissible. I will agree that such room is hidden from public view due to its location but would appreciate being officially advised as to whether or not this particular Section actually prohibits the granting of 5% beer permits to such location."

The only definition which we have found for the term "rathskeller" is (Webster's New International Dictionary, 2nd Ed., p. 2066):

"rathskeller - A restaurant, usually below the street level, at which drinks are served, patterned after the German cellar or basement of a city hall where beer or wine is sold."

The only section of the Liquor Control Act which could have any application to this question is Section 4899, R. S. Mo. 1939, which in part provides:

"Nothing in this act shall be so construed as to authorize the sale of intoxicating liquor in the original package, or at retail by the drink for consumption on the premises where sold, * * * in any building or room where there are blinds, screens, swinging doors, curtains or any other thing in such building or room that will obstruct or obscure the interior of such room from public view. * * * "

From your above quoted letter, it is understood that the rathskeller in question has in it no blinds, screens, swinging doors, etc., but that the only question is whether a license may be granted to an establishment which is below street level. The word "public" means "open to all; common to all or many, general; open to common use." It means the "community at large;" and is "not limited or restricted to any particular class of the community." It has been defined as "the body of the people at large; the people of a neighborhood; the community at large." 4 Words & Phrases (5th Ser.), pages 1068-1070. A rathskeller is a public place. The populace at large, without restriction, has a right to resort to it. Such an establishment must have a public entrance or method of approach. If the interior of such an establishment may be seen by a person of ordinary ability, from such entrance or place of approach, it is open to public view, and the rathskeller may legally be licensed to sell intoxicating liquor. It is immaterial that the place from which the public may view the interior of a rathskeller may not be on the street. All that the law requires is that there shall not be "in such building" anything obstructing public view of the interior of the premises.

There is no doubt that licenses may be granted for sale of intoxicating liquor in hotels in places that are not visible from the street. The interior of such places may be seen from an entrance or approach to which the public in general has a right to resort. Rathskellers are in the same category.

We have found no adjudicated case applicable to this question. Cases arising under laws similar to Section 4899, supra, dealt with the use of screens or blinds (Black on Intoxicating Liquor, p. 195, Section 154).

CONCLUSION

A rathskeller may legally be licensed to sell intoxicating liquor, if the interior of the premises may be seen from the entrance or approach, though not visible from the street.

Respectfully submitted,

ERNEST HUBBELL
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

EH:VC