

LIQUOR: May sell intoxicating liquor in the original package on the premise described in your request.

February 9, 1945

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

Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of February 7, 1945, which request reads as follows:

"I have a matter on which I would appreciate an opinion from your office based on the following set of facts.

"The Hotel Russell in Charleston, Missouri, is owned by J. R. Marable and Lola Martha Marable, his wife, by the entirety. The hotel consists of three stories with a full basement below. The construction of the basement is as follows: There is a stairway leading from the sidewalk down to a door which opens into the south side of the basement. The door opens into a square room or hallway; to the left, upon entering, is another door which leads into a long room which is completely enclosed by solid walls. Inside this room is a soda fountain, tobacco and package liquor store.

"To the right, upon entering the hallway, is a door leading into another part of the basement which is enclosed by solid walls in which is located booths, tables and chairs and a music machine. The entrance leading into the liquor store and to the large room having tables and chairs have separate street numbers.

"J. R. Marable is the holder of a package liquor license described in his application as the room before designated as the liquor store.

"George N. Marable, son of the owners of the hotel building, rents the room at the right in which are located booths, etc., which room is known as "The Cellar". It is a practice for persons to purchase liquor in the package in the liquor store and go into the "Cellar" where they are served set-ups, ice and soda, and are allowed to drink. Also, the "Cellar" has several waiters who, upon customers' requests, will purchase soda for them at the soda fountain and bring it to them in the "Cellar". George Marable is holder of a license to operate a music machine in the city and pays a federal tax in lieu of the conduct of the "Cellar" as a place of business.

"We wish to inquire whether or not the construction of the building with its ownership and operation are such as to permit the operation of the two places of business within the keeping of the law.

"I am enclosing herewith a rough sketch which will more properly describe the places concerned."

Section 4897, Revised Statutes of Missouri 1939, provides that every license issued under the Liquor Control Act shall describe the premises with particularity at which intoxicating liquor may be sold thereunder, and said licensee shall not sell intoxicating liquor at any other place than described in the permit. Section 4897 reads as follows:

"On approval of the application and payment of the license tax herein provided, the supervisor of liquor control shall grant the applicant a license to conduct business in the state for a term to expire with the thirtieth day of June next succeeding the date of such license. A separate license shall be required for

each place of business. Of the license tax to be paid for any such license, the applicant shall pay as many twelfths as there are months (part of a month counted as a month) remaining from the date of the license to the next succeeding July 1st. No such license shall be effective, and no right granted thereby shall be exercised by the licensee, unless and until the licensee shall have obtained and securely affixed to the license in the space provided therefor an original stamp or other form of receipt issued by the duly authorized representative of the federal government, evidencing the payment by the licensee to the federal government of whatever excise or occupational tax is by any law of the United States then in effect required to be paid by a dealer engaged in the occupation designated in said license. Within ten days from the issuance of said federal stamp or receipt, the licensee shall file with the supervisor of liquor control a photostat copy thereof, or such duplicate or indented and numbered stub therefrom as the federal government may have issued to the taxpayer with the original. Every license issued under the provisions of this act shall particularly describe the premises at which intoxicating liquor may be sold thereunder, and such license shall not be deemed to authorize or permit the sale of intoxicating liquor at any place other than that described therein. Applications for renewal of licenses must be filed on or before the first day of May of each calendar year."

Furthermore, the Department of Liquor Control of the State of Missouri promulgated Regulation 1, subdivision (J), which defines premises as used in the Act as follows:

"Premises. - Is the place where intoxicating liquor or nonintoxicating beer is sold and it may be one room, a building comprising several rooms or a building with adjacent or surrounding land such as a lot or garden."

The Department of Liquor Control also adopted Regulation 12, subdivision (B), which deals with the licensee operating more than one business in the same building, and provides that each premise shall have a separate entrance and different street address so as to indicate that each business is run separately and distinct from each other. Subdivision (B) of Regulation 12 reads as follows:

"Partitions - Separate Businesses. - If any retail permittee holds more than one kind of permit for separate business, in the same building, then such building shall be partitioned in such manner that the partitions shall run from the front of the building to the rear of the building, from the ceiling to the floor, and be permanently affixed to the ceiling, floor, front and rear of said building in such manner as to make two separate and distinct premises. There shall be a separate entrance in front of each of the premises and each of the premises shall have a different street address, so as to sufficiently indicate that said businesses are run separately and distinct from each other and not in conjunction with each other. In addition, the business maintained on each of the said premises must be manned and serviced by an entirely separate and distinct group of employees, and there shall be no buzzers, bells or other wiring or speaking system connecting one business with the other. Separate files, records and accounts pertaining to the business must be maintained."

The authorities have defined premises as used in describing a place to sell intoxicating liquor as a distinct and definite locality, a fixed cite capable of being located. In *State v. Fezzette*, 69 A. 1073, 1075, 103 Me. 467, the court in defining premises said:

"The word 'premises,' as used in Rev. St. c. 29, Sec. 49, commanding an officer to enter the place or premises before named and therein to search for intoxicating liquors, signifies it as a distinct and definite locality. It may mean a room or a shop or a building or a definite area, but in either case the locality is fixed; otherwise the use of the word would be misapplied."

In the case of *People ex rel. Chambers v. Shults*, 149 N. Y. S. 913, 915, 87 Misc. 348, we find the following definition:

"Held, that the term 'premises,' in section 17, means the place where liquors are authorized to be sold, and does not include relator's whole hotel, the town certificate only entitling him to sell in that portion of the building located in the town; * * * * ."

As we view the facts in your request for this opinion we are unable to find any reason why Mr. J. R. Marable should not be permitted to continue to operate and hereafter obtain a license to sell at retail intoxicating liquor in the original package on the same premises now occupied by him. It is not proper to deny him the right to sell such intoxicating liquor on said premises for the only reason that his son is operating another and a different kind of business in an adjoining room having an entirely separate entrance and no openings whatsoever between the two rooms. The only possible objection to such an arrangement, as we see it, might be in that the entrance to the licensed premise may be partially concealed from the street. However, from an examination of the attached drawing, apparently this entrance is not entirely concealed and the room or hall going from the street to the entrance of said building is rather large and open to the public at all times, since this licensed premise is located in a part of the hotel proper.

On January 17, 1938, this department rendered an opinion holding that a place may even be partitioned so as to constitute two premises, thereby permitting the sale of intoxicating liquor in the original package on one premise and beer by the drink on the other.

Therefore, under the facts stated in your letter and in view of the foregoing statutes and regulations of the Department of Liquor Control, we are of the opinion that the construction of the building wherein this licensee is located, and the ownership and operation of the two businesses mentioned in your letter, will not disqualify

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the present licensee from carrying on under his original package license. Of course, if there is any collusion between the operators of the two establishments, then a different question would be presented, but your request does not indicate such to be the case.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General

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