

LIQUOR CONTROL: Liquor by drinks license cannot be issued for premises on airport constructed by city outside its corporate limits.

AIRPORTS:

January 3, 1950



Mr. Covell R. Hewitt, Supervisor
Department of Liquor Control
State Office Building
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent opinion request which reads in part as follows:

"Mr. Loyd Roberts, City Attorney of Joplin, Missouri, has requested me to request you to render an opinion as to whether or not the Supervisor of Liquor Control may issue a license to sell liquor by the drink at retail for consumption on the premises where sold under the circumstances set forth in his letter to me dated November 28, 1949."
* * * * *

Mr. Roberts' letter reads in part:

"The City of Joplin, a municipal corporation of the Second Class, has constructed, owns, operates and maintains an airport some two miles north of the official corporate boundaries of this city. * * * * *

"An airport terminal building has just been completed at an approximate cost of \$275,000.00 which contains space for the operation of a restaurant. One third of the ground floor and a portion of the basement has been designed for this purpose. * * * * *

"Our Airport Board is interested in securing a lessee for the restaurant facilities in the terminal building and while a number are interested, so far they have failed to make an offer because they question whether or not

they would be lawfully entitled to serve intoxicating liquor by the drink on said premises."

The question presented is whether or not the Supervisor of Liquor Control has authority to issue a license for the sale of intoxicating liquor by the drink at retail for consumption on the premises, where such premises are situated at the airport constructed and operated by the City of Joplin, which airport is situated at a distance of two miles from the corporate limits of the City of Joplin. We assume that it is the sale of intoxicating liquor other than malt liquor containing not in excess of five (5%) per cent by weight that is contemplated.

Section 4890, R.S. Mo. 1939, of the Liquor Control Act provides in part:

"Provided further, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold, outside the limits of such incorporated cities." **

The question that remains then is whether or not the airport in this instance is within the limits of Joplin as intended by the Liquor Control Act.

Since the Act does not define the words "limits of such incorporated cities" for the purposes of the Act, we feel that it is necessary to consider the "limits of such incorporated cities" to be the corporate limits as established by the general law regarding such cities. These limits are fixed by charter and may thereafter be extended or reduced as provided by law. It is a fundamental principal of law relating to municipal

corporations that the power to enlarge or diminish the corporate limits of municipal corporations lies solely in the legislature, which has granted to cities of the second class the authority to extend or diminish their limits. Section 6606, R.S.Mo. 1939, provides the method to be employed.

The airport is situated two miles from the corporate limits of the City of Joplin. Article 3 of Chapter 123, R.S. Mo. 1939, provides the authority for the construction, maintenance, operation, and regulation of this airport by the City of Joplin. Section 15122 of Article 3 provides that:

"The local legislative body of any city, including cities under special charter, village or town in this state is hereby authorized to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate, in whole or in part, alone or jointly or concurrently with others, airports or landing fields for the use of airplanes and other aircraft either within or without the limits of such cities, villages, or towns, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such city, village, or town."

This Section, therefore, recognizes that a city may wish to construct such airport without the corporate limits of the city, and specifically provides that such may be done. No authority can be found in Article 3 of Chapter 123, R.S. Mo. 1939, which provides that the site of an airport built by a city without the city limits shall thereby become part of the corporate limits of such city.

That one might take the view that this license can properly be issued, it would be necessary to hold that the airport area is within the limits of the City of Joplin.

This is not true geographically, nor can it be justified legally. This department, in an official opinion addressed to the Honorable Hugh P. Williamson, and dated July 10, 1948, (copy enclosed), has held that a city of the third class is not vested with police power over an airport constructed by it outside its corporate limits. We feel that this ruling applies as well to cities of the second class. Therefore, we see that even for the purpose of the exercise of police power, an airport constructed by a city outside its limits cannot be considered to be legally within its limits.

In the case of *Borders v. State*, 66 S.W. 1102, the construction of a statute prohibiting gaming for money within the limits of any city on Sunday was in question. The Texas Court, at l.c. 1103, held:

"* * * We understand that title 18, Sayles' Rev. Civ. St., relates to cities and towns and their incorporation; and it would appear from various articles therein contained that such city or town, whether incorporated under the general law or a city having a charter granted by the legislature, must have certain defined limits. We hold that the charter granted the city of Waxahachie fixed the limits of said city, and, although there may be a collection of houses outside or proximate to the corporate limits, this is not an integral part of said city, and cannot become so until it is brought within the municipality by some mode provided by law. * * * In our view, when the legislature used the term 'city limits' in the Sunday gaming statute, they meant the corporate limits of such city. * * * * *"

From the foregoing we must conclude that the proposed

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license cannot be issued, as the airport is situated without the corporate limits of the City of Joplin, and, therefore, Section 4890, supra, specifically prevents the issuance of said license.

CONCLUSION.

It is therefore, the opinion of this department that the Supervisor of Liquor Control has no authority to issue a license for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold, where such premises are situated at the airport constructed and operated by the City of Joplin, which airport is situated at a distance of two miles from the corporate limits of the City of Joplin.

Respectfully submitted,

RICHARD H. VOSS
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APPROVED:

J. E. TAYLOR
Attorney General

Enclosure

RHV:p