

INTOXICATING LIQUORS:

CITIES:

Cities do not have the right to require places of business handling intoxicating liquors to close on Sundays and between the hours of 1:30 o'clock, a.m. and 6:00 o'clock, a.m.

8-26  
August 23, 1935.



Mr. Marion E. Lamb  
City Attorney  
Moberly, Missouri

No. 51

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"Under the State law places that sell 5% beer have to stop the sale of the same at 1:30 in the morning. What to my mind, would be a good thing is that the City in which the same is sold would make such places not only stop the sale of beer at that hour, but would also make such places close their other business after that hour and on Sunday. There is some doubt in my mind that the City would have this power, I would appreciate very much your opinion as to whether or not the City has that power."

Provisions of the State law prohibiting the sale of intoxicating liquors on Sunday, election days and between the hours of 1:30 o'clock, a.m. and 6:00 o'clock, a.m. are found in Sections 15 and 15-a of the Liquor Control Act. Section 15 of said Act provides:

"No person having a license under

the provisions of this act shall sell, give away or otherwise dispose of, or suffer the same to be done upon or about his premises, any intoxicating liquor in any quantity on the first day of the week, commonly called Sunday, or upon the day of any general, special or primary election in this state, or upon any county, township, city, town or municipal election day. Provided, the sale of such intoxicating liquors may be resumed on any such election day, after the expiration of thirty minutes next following the hour, or time, fixed by law for the closing of the polls at any such election."

Section 15-a of the Act reads as follows:

"No person having a license under the provisions of this act shall sell, give away, or otherwise dispose of or suffer the same to be done, upon or about his premises any intoxicating liquor in any quantity between the hours of 1:30 o'clock, a.m. and 6:00 o'clock, a.m., and any person violating any provision of this section shall be deemed guilty of a misdemeanor."

The above provisions of the Liquor Control Act do not require that a person holding a license to sell intoxicating liquor shall close his place of business on Sunday, election days, and between the hours of 1:30 o'clock, a.m. and 6:00 o'clock, a.m., but only prohibit the licensee from selling intoxicating liquor on his premises at such times.

The power of a city to regulate and control the sale of intoxicating liquor within its limits is found in Section 25 of the Liquor Control Act, which reads in part as follows:

"\*\*\*\* The Board of Aldermen, City Council or other proper authorities of incorporated cities, may charge for licenses, issued to manufacturers, distillers, brewers, wholesalers and

retailers of all intoxicating liquor, located within their limits, fix the amount to be charged for such license, subject to the limitations of this act, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, provide for penalties for the violation of such ordinances, where not inconsistent with the provisions of this act."

The power given cities in the above section is the right to regulate and control the sale of intoxicating liquors and not the right to regulate and control the business other than the sale of intoxicating liquor in which a licensee may be engaged. Said section also prohibits a city from passing any ordinance inconsistent with the provisions of the Liquor Control Act.

From a careful reading of the Liquor Control Act, it is apparent that the Legislature intended that intoxicating liquor should be handled as an incident to other businesses. They prohibited the handling of beer and other intoxicating liquors in saloons and provided that certain kinds of liquor should be handled by persons engaged in certain kinds of business, and finally they did not require that the vendors of liquor should close their places of business on Sundays and between the hours of 1:30 o'clock, a.m. and 6:00 o'clock, a.m., but only prohibited said vendors from selling said liquors at such times.

It is a recognized principle of law that when the Legislature provides a uniform system for the regulation, control and licensing of the liquor traffic, it has the effect to repeal all inconsistent provisions in municipal charters and the ordinances adopted under them. In other words, the only authority that a city has to regulate and control the sale of intoxicating liquor is found in Section 25 of the Liquor Control Act.

In the case of State ex rel. vs. McCammon, 111 Mo. App. loc. cit. 631 and 632, the Court said:

"The statute, just cited, established a general state policy upon the subject of dramshop license by requiring

that in cities of over two thousand population, upon a proper application and petition, it became the duty of the county court to grant a license (Scarritt v. Jackson County, 89 Mo. App. 585), the performance of which could be compelled by mandamus. \*\*\*\*

"We are of the opinion that the charter powers relied upon do not confer authority upon the city to overturn the general law on the subject of dramshops. Indeed, the charter itself, as above quoted, shows that the city has no power to pass ordinances on any subject which are repugnant to the laws of the State. So therefore when the State law says that a license shall be granted on the petition of two-thirds of the inhabitants of a block, the board of aldermen have not the authority to say that there shall be a petition of two-thirds of the entire city. Though the city is authorized to regulate a dramshop, it cannot regulate it in those particulars which would be inconsistent with the regulations made by the State. \*\*\*\*

\*\*\*\*\*The law is stated by Black on Intoxicating Liquors, section 223, in accord with these cases. He says:

"The powers conferred upon a municipal corporation must be exercised in conformity to the general laws of the State, unless it is clear that the exclusive control of the subject is given to the municipality or that the general law is to be superseded or suspended by the charter. A statute granting authority to a city to pass ordinances in relation to the liquor traffic does not repeal the general laws on that subject. The rule is that the municipal ordinances cannot set aside, limit or enlarge the statute law of the State, unless its power to do so can be shown in express terms or by necessary implication.' And again at section 224 the same author says:

"Whenever a change of policy takes place in the State on the subject of its liquor legislation, by the adoption of a different

system -- as when general prohibition, or prohibition for particular localities is enacted by a constitutional amendment of general statute, or when the Legislature provides a uniform and general system for the licensing of the traffic -- this has the effect to repeal all inconsistent provisions in municipal charters and the ordinances adopted under them.'"

CONCLUSION.

In view of the above, it is the opinion of this department that the only power a city has to regulate and control the sale of intoxicating liquor is found in Section 25 of the Liquor Control Act. It is our further opinion that Section 25 of said Act does not authorize a city to pass an ordinance requiring a place of business which handles beer or other intoxicating liquor to close on Sunday and between the hours of 1:30 o'clock, a.m., and 6:00 o'clock, a.m.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney-General.

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney-General.

JET/afj