

ARMORIES: Commander of Missouri National Guard has right to make reasonable rules and regulations governing state armories.

CRIMINAL LAW: Statute prohibits drinking intoxicating liquors at a lawful public assemblage.

March 26, 1940 <sup>3/30</sup>

Brigadier General Lewis M. Means  
Commanding Officer  
Missouri National Guard  
Jefferson City, Missouri



Dear Sir:

We acknowledge receipt of your request for an opinion, dated March 5, 1940, which is as follows:

"The Missouri National Guard has been granted an appropriation by the last two Legislatures for the construction of armories built from these funds and from local community funds, and Works Projects Administration of the federal government. The deeds for the ground upon which these buildings have been or are being constructed are under the state law accepted for the state by the Hon. Lloyd W. King, State Superintendent of Schools.

Under the assumption that, being built from funds appropriated to the Missouri National Guard, the buildings would be under the active jurisdiction and supervision of the Missouri National Guard, a ruling has been made by the undersigned, as the Commanding General of the Missouri National Guard, that no liquor will be served in or on the premises of any of the several newly constructed state armories.

In the city of Sikeston, Missouri, a group of citizens of that city, presumably connected with the City of Sikeston, have prior to the ruling, been holding public dances in the building, and have

had tables and served set-ups for liquor.

There is an easement appearing in the deed for this property in the City of Sikeston, as follows:

IT IS UNDERSTOOD AND AGREED that the City of Sikeston, Missouri, the Board of Education of the City of Sikeston, and the various civic and service clubs of said City of Sikeston shall have a perpetual easement in the use of the building and/or of any buildings to be constructed on the within premises so long as such use does not conflict with the use and benefit of the Missouri National Guard as an Armory.

An opinion is requested on the following points: (1). Do the National Guard Authorities have the authority under state laws, to set out rules and regulations such as mentioned above, or any other rules pertinent to the public use of these National Guard Armories? (2). Is there any enactment in the Missouri Statutes which would preclude the serving of liquor in a public building? (3). In the event the answer to question No. 1 is negative, who does have authority, under state law, to set out rules and regulations for the public use of these National Guard Armories?"

We shall take up the questions presented by you in their order, and on the question of your right to make rules concerning the various armories of the state, we set out Section 13844, Revised Statutes of Missouri, 1929, which charges you with the care of all the equipment belonging to the National Guard. Said section is, in part, as follows:

"There shall be a commanding general of the national guard with the rank of brigadier-general who shall command the same and who shall be responsible only to the

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governor of its drill, equipment, instruction, inspection, service, movements, operations and general efficiency. His office shall be the office of administration and his headquarters the headquarters of the national guard. \* \* \* All other commanding officers shall be responsible to the commanding general for the equipment, drill, instruction and efficiency of their respective commands. Every commissioned officer and enlisted man shall be responsible to the officer under whose immediate command he serves for prompt and unhesitating obedience, and the preservation, care and proper use of public property in his care. \* \* \* "

It is also plain that the armories themselves are to be under the jurisdiction of the commanding officer through his subordinates under Section 13871, which is as follows:

"Upon the application of all posts of the grand army of the republic, camps of the united confederate veterans, camps of the united Spanish war veterans and of other societies composed of veterans of any war in which the forces of this state have participated, the officer in charge of any armory owned or leased by the state may permit the use of such armory for the meeting of such veteran societies without charge on dates when the same is not in use for military purposes."

It is apparent, therefore, that you, as commanding officer of the Missouri National Guard, have full and complete control over all armories in the state, and it becomes necessary to consider the effect of the easement retained by the grantors in the Sikeston Armory.

It appears from reading the pertinent part of the deed cited by you that four different parties or organizations have a limited right of use to the armory. They are: first, the City of Sikeston; second, the Board of Education of the

City of Sikeston; third, civic clubs of said city, and fourth, service clubs of said city.

It is readily apparent that, under the first of the foregoing divisions, a use by the City of Sikeston as a municipal organization is referred to. In other words, use by it in the furtherance of its statutory powers and functions, as granted by the legislature. It is also plain that the use by the Board of Education must be in its official capacity as such board, duly constituted under the laws of Missouri.

The words "civic club" and "service club" have not been judicially defined in this state, but the common meaning of the words is accepted as being an organization or organizations for the furtherance of the general well being in the locality. One of the definitions given by Webster of the word "civic" is "Of or pertaining to a city or other municipality or citizenship."

It is further provided by the deed that the use of the foregoing organizations of the armory must not interfere with the use of such building or buildings by your organization. Doubtless, you are the one most competent to determine the usage to be made of such building by your organization, and have the right to make such rules and regulations as are consistent with the benefits to be received by the National Guard.

If liquor has been sold or is being sold on these premises by any person or persons without proper license therefor, it constitutes a nuisance under Section 44-a-9, found in Laws of Missouri, 1935, at page 283, and would subject the premises to an injunction suit under which the court may order such building to be vacated for a period of one year. This might involve a question of conflict of the powers of the executive and judicial authorities, which we do not attempt to determine, but, in any event, a temporary injunction would interfere with your use of the building, and you have the right to prohibit the sale of intoxicating liquor on the premises for that reason.

As to your second question, in which you inquire if there is any section of the statutes precluding the serving of liquor in a public building, we direct your attention to Section 4249, Revised Statutes of Missouri, 1929, which is as follows:

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"It shall be unlawful for any person in this state to enter any school-house or church house in which there is an assemblage of people, met for a lawful purpose, in a drunken or intoxicated condition, or to attend any other assemblage of people, met for lawful purpose, at any other public place, in a drunken or intoxicated condition, or to drink or offer to drink any intoxicating liquors in the presence of any such assembly of people, within this state, and every person or persons, so doing, shall be guilty of a misdemeanor, and fined not less than five dollars or more than twenty-five dollars for said offense."

Under this statute, it is a misdemeanor for any person to drink or offer to drink any intoxicating liquors in the presence of any lawful assemblage of people in any public place in this state.

In view of the answer to your first question, it is unnecessary to answer your third.

It is our conclusion, therefore, that you, as commanding officer of the Missouri National Guard, have the right to make such reasonable rules and regulations concerning the use of the armories under your jurisdiction as are consistent with the maximum benefits to be obtained by your organization.

It is our further conclusion that the drinking of intoxicating liquors by persons at a lawful assembly in these buildings constitutes a misdemeanor.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

RLH:VC