

LIQUOR: Liquor Control Act contains no provisions  
for service of process against foreign  
CORPORATIONS: brewing corporations.

May 2, 1940

Honorable C. Roy Noel, Supervisor  
Department of Liquor Control  
Jefferson City, Missouri



Dear Sir:

We have received your letter of April 23, which reads as follows:

"We are this day in receipt of a letter from the Honorable Roy Hamlin, Hannibal, Missouri, requesting information, which we ourselves are unable to give, in regard to legal service on a non-resident permittee. It has been our understanding that any designated dealer in the product of said permittee was the agent of this concern through whom legal service could be had. Mr. Hamlin's letter reads:

'Your letter of April 19th received this morning and in response thereto please be advised that the situation I have that I was talking to you about is as follows: I have brought a civil suit under the liquor laws against the Dick Brothers Brewing Company of Quincy, Illinois. I have procured service upon them by serving their local representative, Mr. Titus. The brewing company has now come in and entered a special appearance and filed an affidavit to the effect that they have no agent in the State of Missouri and never have had, and service on Titus is null, void and of no effect, and not binding upon them.

'This is the situation as I understand it.

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Mr. Titus is the only agent they have in and around Hannibal. He handles their beer, he advertises their beer, he takes orders for delivery of their beer, and he collects for it and he is known as a distributor. He says what he does is that he goes to Quincy, Illinois, and buys the beer directly from the Dick Bros. Brewing Company and then he sells it and makes a commission. However, they have no other representative here and on his truck he has "Dick Bros. Brewing Company, Quincy, Illinois."

'Unless I am able to get service on this company in this way, I know of no other way I can get service and I know that was not the intention of our laws, because if we are unable to get service on non-resident brewers in Missouri for wrongs done in the State of Missouri, we ought to know it at once and amend the present law.

'I wish you would get an opinion from the Attorney General on this matter, as to whether or not our present law is sufficient to get service on non-resident brewers in the manner stated hereinabove.

Hon. C. Roy Noel

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If not, ask them to make any suggestions they can as to how it can be done.'

"We would like to have your opinion as to how this department, if the time should arise, might obtain legal service on a non-resident licensee for a violation of the Liquor Control Act."

It is apparent from your letter that the matter about which you inquire is now pending before a court of competent jurisdiction. Therefore, we should make no comment on the particular matter as to whether or not Mr. Titus is an agent of the Dick Bros. Brewing Company of Quincy, Illinois. He may or may not be. That is a question of fact.

There is nothing in the Liquor Control Act itself which in any way mentions or deals with the service of process on foreign liquor corporations licensed to do business by the Supervisor of Liquor Control. The legislature has seen fit to authorize service of process by serving certain state officers in connection with other types of foreign companies doing business in this state, but there are no similar laws dealing particularly with liquor corporations. For instance, section 5614 of the Missouri Laws, L. of Mo. 1931, page 158 requires the following of foreign building and loan associations, doing business in Missouri, this section reads in part as follows:

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"Third.--It shall also file in the said bureau a written instrument, duly executed, agreeing that a summons may issue against it from any county or city in this state, directed to the sheriff of the county or city in which the office of the supervisor of building and loan associations is situated, commanding him to serve the same by certified copy personally upon the said supervisor, or by leaving a copy thereof at his office. The said supervisor shall, however, mail a copy of any papers served upon him, postage prepaid, to the home office of such association."

Section 5894, Laws of Missouri, 1939, p. 451, similarly provides for service of process on foreign insurance companies by serving the Superintendent of Insurance. However, the legislature has never passed a similar statute in connection with foreign liquor corporations.

We find, however, that a corporation known as the Dick & Brothers Quincy Brewery Co., of Quincy, Illinois, is now authorized to do business in Missouri by the Secretary of State. We also find that the last two anti-trust affidavits filed with the Secretary of State for this Corporation were filed by the "Dick Bros., Brewery Co." of Quincy, Illinois. We have also been informed by the office of the Supervisor of Liquor Control that the name of the Dick & Brothers Quincy Brewery Co., was changed in the month of May, 1937, and it has been since that time, and is now, known as the Dick Bros. Brewing Co. While the records of the Secretary of State do not show this change, yet this appears, from the information received, to be a fact. The Supervisor's office also advises us that the "Dick Bros. Brewing Co." of Quincy, Illinois is now licensed to solicit and sell beer to wholesalers in the state of Missouri.

As is required by law, the Dick & Bros., Quincy Brewery Co., (which as stated above, now appears to be the Dick Bros. Brewing Company) filed with the Secretary of State the name of George L. Gisler, 960 Mulberry Street, Kansas City, Missouri, as its resident agent upon whom pro-

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cess might be served. Another address contained in its files shows Gisler's address as 906 Commerce Building, Kansas City, Missouri. Service of process can undoubtedly be had upon him, if he can be found. If Gisler cannot be found and a non est return is made, service can be had under such circumstances by serving the Secretary of State. This procedure is provided for in Section 4598, Laws of Missouri, 1937, page 204.

Section 723, R. S. Missouri, 1929, provides as follows:

"Suits against corporations shall be commenced either in the county where the cause of action accrued, or in case the corporation defendant is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state, then in either of such counties, or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business."

In State ex rel v. Jones, 270 Mo. 230, the court held that the word "corporation", as used in the above section, comprehends foreign as well as domestic corporations. Therefore, if the cause of action accrued in Cole County, for instance, the Circuit Court of Cole County would have jurisdiction and service of process could be had by serving the appointed agent in Jackson County.

APPROVED:

COVELL R. HEWITT  
(Acting) Attorney General

Respectfully submitted,

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JFA:RW