

LIQUOR: Liquor dealers cannot sell wine in unstamped bottles.

September 28, 1939

Hon. Walker Pierce, Supervisor
Department of Liquor Control
Jefferson City, Missouri

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Dear Sir:

We have received your letter of September 15 which reads as follows:

"The following situation now exists in Kansas City and I am of the opinion that it is a violation of law:

"Many holders of by-the-drink permits are purchasing wine by the barrel and bottling it. Missouri excise stamps are affixed to the wine barrel and the tax thereon is paid. The saloon man, after he bottles it, places a label on the bottle stating that the wine therein was bottled from a tax paid barrel.

"I am of the opinion that the liquor law contemplates only two types of sales of intoxicating liquor and they are sale by the drink and sale in the original package.

"Will you please give me the benefit of your opinion as to whether or not the operation which I have outlined is a violation of the law."

Section 21a1 of the Liquor Laws, Laws of Missouri, 1937, page 531, provides that certain charges are to be

paid to the Supervisor of Liquor Control for the privilege of selling intoxicating liquors in the State of Missouri. Subsection (b) thereof provides for a 2¢ per gallon tax for the privilege of selling light wines and 10¢ per gallon on fortified wines. The term "light wines" is then defined as meaning any fermented wine containing not in excess of 14% of alcohol by weight and "fortified wines" meaning all other wines containing in excess of 14% of alcohol by weight. Subsection (c) of the same section then reads as follows:

"The amounts required to be paid by this section shall be evidenced by stamps or labels purchased from the Supervisor of Liquor Control and affixed to the container of such spirituous liquor. The person who shall first sell such liquor in this state shall be liable for such payment and shall purchase, affix and cancel the stamps or labels required to be affixed to such container."

It, therefore, appears to be clear that the amount required to be paid by said Section 21a1 must be evidenced by stamps or labels purchased from the Supervisor of Liquor Control and that such stamps must be affixed to each of said containers. This is true if the intoxicating liquor is being sold as a package and not as a drink in a licensed by-the-drink place. In other words, package liquor when sold as a package and to be, perhaps, removed from the premises by the purchaser and consumed elsewhere, must have the stamps or labels affixed to said container before such a sale can legally be made.

Section 30f of the Liquor Laws, Laws of Missouri, 1935, page 278, reads as follows:

"The sale of any intoxicating liquor except malt liquor, in the original package, in any quantity less than one-half pint shall be deemed sale by the drink, and may be made only by a holder of a retail liquor dealer's license and when so made, the container in every case shall be emptied and the contents thereof served as other intoxicating liquors sold by the drink are served."

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From another communication from you, we understand that the dealers you have in mind have been re-bottling the wine in pint and quart bottles and are selling the same in quart and pint quantities; that such sales are being made as package sales and in bottles which contain no state stamps whatsoever. Therefore, since the sales are being made in bottles containing more than one-half pint, each such sale constitutes a package liquor sale. Section 30f, by stating that sales of intoxicating liquor in the original package in any quantity less than one-half pint shall be deemed a sale by-the-drink, is likewise saying that all sales in quantities more than one-half pint are not sales by-the-drink. All sales in bottles containing more than one-half pint of intoxicating liquor must, therefore, be sales by the package and can be removed from the premises in such packages and consumed elsewhere. It is clear, then, that such packages must contain the stamps and that it is illegal to make such sales of wine in unstamped bottles, even though the tax might have been paid on the particular wine when it was contained in a larger container.

Furthermore, as a practical matter, if this were not the law, it would be difficult - if not impossible - for the Supervisor or his inspectors to ascertain whether the required tax had been paid on any package of wine so bottled. If the package itself should not show the stamps evidencing the payment of the tax, then nothing would as far as that particular quantity of wine was concerned. Anyway, as we have stated above, the law appears clear that each package of intoxicating liquor sold as a package must contain the required amount of stamps.

CONCLUSION.

We are of the opinion, therefore, that wine sold in a package and not by-the-drink cannot be legally sold unless the package in which the wine is contained is properly stamped and labeled by stamps purchased from the Supervisor of Liquor Control and affixed to such container; that the laws governing the sale of intoxicating liquor require that all packages containing intoxicating liquor must

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be properly stamped before the same are eligible for sale.

Respectfully submitted,

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