

ACT: Holder of Permit to sell non-intoxicating beer having alcoholic content not in excess of 3.2% by weight is prohibited from obtaining any license under Liquor Control Act.

2-2
January 31, 1934.



Dr. W.F. Schlicht,
Niangua, Missouri.

Dear Dr. Schlicht:

This department is in receipt of your request for an opinion as to the following state of facts:

"I wish to ask you if you will please give me a ruling on the following questions in regard to retail dealers handling beer:

Is it permissible for a retailer with 3.2% license to handle 3.2 beer, and at the same time secure license for 4.5% beer, he holding both state permits, sell 3.2 and 4.5% beer at the same place of business,

or must a 3.2% holder just sell 3.2 beer and not be allowed to purchase a 4.5% license,

or 4.5% retailer purchase 4.5% license and not be permitted to purchase 3.2% license.

Any other information that you can give me in regard to the handling of beer and hard liquor, I will greatly appreciate same."

I.

A retailer possessing a license to sell 3.2% beer may not sell any intoxicating liquor having an alcoholic content in excess of 3.2 per cent by weight.

The Liquor Control Act of Missouri as passed by the 57th General Assembly of the State of Missouri in extra session has caused much confusion with reference to persons holding what are properly termed "3.2% beer permits" under the Act of the General

Assembly legalizing the sale of non-intoxicating beer. (Laws of Mo. 1933, p. 256).

In the first place, the Liquor Control Act of Missouri does not alter, suspend or repeal in any manner whatsoever any of the provisions of the "3.2% beer law" referred to above. Both laws are now in effect and both are the law of Missouri.

Section 13139h of the Non-intoxicating Beer Law (Laws of Mo. 1933, p. 259) provides in part as follows:

"Before any permit authorized by this article shall be issued and delivered to any applicant therefor, such applicant shall take and subscribe to an oath that he will not allow any intoxicating liquor of any kind or character, including beer having an alcoholic content in excess of 3.2 per cent by weight, to be kept, stored or secreted in or upon the premises described in such permit, and that such applicant will not otherwise violate any law of this state, or knowingly allow any other person to violate any law of this state while in or upon such premises."

It will thus be seen that the holder of a permit to sell 3.2 per cent beer would be prohibited from obtaining any license under the Liquor Control Act providing for the manufacture and sale of intoxicating liquor having an alcoholic content in excess of 3.2% by weight. This, not by reason of any provision of the Liquor Control Act, but by express mandate of the act relating to the manufacture and sale of non-intoxicating beer.

CONCLUSION

In view of the foregoing, the holder of a permit to sell non-intoxicating beer having an alcoholic content not in excess of 3.2 per cent by weight would be prohibited from obtaining any license under the Liquor Control Act of Missouri.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

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APPROVED:

ROY McKITTRICK,
Attorney General