INTOXICATING LIQUOR: The operation of a disorderly house constitutes a public nuisance, and the proper procedure to abate a public nuisance is by injunction in a court of equity.

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Honorable Roy W. Starling,
Prosecuting Attorney,
Eldon, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of November 22nd requesting an opinion from this department, which reads as follows:

> "I have a place in this county which is licensed for the sale of intoxicating beer (5%), by the drink and which has become very disorderly. I wish to inquire if, in your opinion, assuming that we are only able to prove that the place is disorderly, if under the provisions of Secs. 44-a-9 and 44-a-10 I would be authorized to apply for an injunction as a nuisance.
>
> "It occurs to me that under the definition of a nuisance (Sec. 44-a-9) it applies to only specific violations and that under Sec. 26 the fact that a place is not run in an orderly manner is grounds for revocation of a license by the Supervisor of Liquor Control and not a specific violation of the provisions of the act and I do not find any offense listed on pages 32, 33 and 34 of the interpretation of the liquor control act which would fit this case.
>
> "I should like to have, if you have such forms, forms for bill of injunction, notice and form of writ, which could be used in, if in your opinion I can maintain such, an action."

As stated in your letter, Sections 44-a-9 and 44-a-10 of the Liquor Control Act apply to specific violations. However, the Supreme Court of this state has held that such provisions regarding nuisances do not undertake to cover all nuisances and in the absence of any statutory provision covering a nuisance, the common law remains in force. In State of Missouri vs. Mathew Boll, 59 Mo. 321, l. c. 323, the court said:

> "As to the other point, the provisions of the statute in regard to nuisances do not undertake to cover all cases of public nuisance, and as to those not provided for by statute, the common law remains in force. This principle is recognized as to other common law offenses, belonging to a general class, in regard to some of which provision has been made by statute, in the case of the State vs. Appling, (25 Mo. 315) and the State vs. Rose (32 Mo. 560). The case at bar does not come within any of the statutory provisions cited above, but the facts charged constitute an offense at common law."

See, also, State ex rel. v. Lamb, 237 Mo. 437.

At common law the operation of a disorderly house constituted a nuisance. Joyce on Law of Nuisances, Sec. 400, page 577, in classifying a disorderly house as a public nuisance, said:

> "A public and disorderly liquor and store house in a town in and about which dissolute persons are permitted, for lucre, to remain at night and in the day time, drinking, tippling, carousing, swearing, hallooing, etc., to the damage, disturbance, etc., is a public nuisance by common law and the keeper of it is indictable. And if a person licensed to retail spirituous liquors causes and procures, for lucre, evil-disposed persons to congregate in and about the house in which the liquors are sold, and permits them to remain there

> drinking, cursing, blackguarding, fighting, etc., the house is a public nuisance, and the keeper of it is indictable."

See, also, Sopher v. State, 14 L.R.A. (N.S.) 172, l. c. 176, 177.

The proper procedure to abate a public nuisance is by injunction in a court of equity. In State ex rel. v. Lamb, 237 Mo. 437, l. c. 456, the court said:

> "There is no question as to the jurisdiction of the circuit court to enjoin a public nuisance."

Furthermore, the fact that a public nuisance may also be a crime will not prevent a court of equity from enjoining it. In State ex rel. v. Canty, 207 Mo. 439, l. c. 459, the court said:

> "The contention of respondents that a court of equity has no jurisdiction to abate a public nuisance where the offenders are amenable to the criminal laws of the State is not tenable, as is fully shown by the following authorities:" (Cases.)

See, also, State ex rel. v. Lamb, supra, l. c. 457.

Therefore, it is the opinion of this department that if said licensee is operating a disorderly house, even though such action does not constitute a public nuisance under Sections 44-a-9 and 44-a10, Laws of Missouri, 1937, it was considered a public nuisance at common law. It is, therefore, still considered a public nuisance and a court of equity has jurisdiction to abate such a nuisance by injunction.

In compliance with your request, we are enclosing forms prepared by this department for a temporary writ of injunction, bill for injunction, notice, search warrant, etc.

Yours very truly,

AUBREY R. HAMMETT, Jr.,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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