

LIQUOR

CRIMINAL LAW

Construing Sections 4881, 4891 and 4892
Mo. R.S.A. relative to employee of licensee
making sale during restricted period under
Section 4991.

July 21, 1949

7/26/49

Hon. Jasper R. Vettori
First Associate Prosecuting Attorney
City of St. Louis
14th and Market Streets
St. Louis, Missouri



Dear Sir:

This will acknowledge receipt of your request for
an opinion which reads in part:

"I desire the benefit of your construction of Sections 4891 and 92 of the Laws of 1939, as amended, pertaining to the hours of sale of intoxicating liquor. Both of these Sections specifically apply to 'no person having a license under the provisions of this act shall - - -' As I construe these Sections, they apply only to a licensee and not to a bartender or other employee.

"Before me, at this time, is an application for an information against a bartender who was arrested at 3:50 A.M., after officers had observed him disposing of intoxicating liquor in a tavern where he is employed. The licensee in question was not present, but on the contrary, was and is confined in a hospital. From the information I have it will be impossible to show that the licensee had any knowledge of the commission of the offense, or in any way sanctioned it, but that in any event is not the question here. The question in the instant case is, under these Sections, can the bartender be successfully prosecuted?

"I take the liberty of calling your attention to Section 4881 and Section 4885 of the intoxicating liquor laws of the State of Missouri, and in each of those Sections, the statute specifically mentions, 'no person or employee', and it seems to me that if the

legislature had intended to penalize a bartender for a violation of the two Sections under consideration that would have so stated."

Your request does not relate to the licensee but under the facts related hereinabove you inquire if the bartender, an employee of said licensee, is subject to prosecution of disposing of intoxicating liquor in said licensed tavern during such time as provided in Section 4891 Mo. R.S.A., that the law prohibits the sale, giving away or otherwise disposing of same.

The provisions of Section 4891, Mo. R.S.A., makes it a violation of the law for any person having a license under the Liquor Control Act, to sell, give away or otherwise dispose or suffer the same to be done on or about his premises during certain periods. Said Section reads in part:

"No person having a license under the provisions of this Act shall sell, give away or otherwise dispose of or suffer the same to be done upon or about his premises, any intoxicating liquor in any quantity between the hours of 1:30 o'clock A.M. and 6:00 o'clock A.M. on week days and between the hours of 12:00 o'clock midnight Saturday and 12:00 o'clock midnight Sunday, * * *"

Another provision of the Liquor Control Act which is very similar to the foregoing provision is Section 4892 which reads:

"No person having a license under the provisions of this act shall sell, give away, or otherwise dispose of, or suffer the same to be done, upon or about his premises, any intoxicating liquor in any quantity between the hours of 1:30 o'clock a.m. and 6:00 o'clock a.m., and any person violating any provision of this section shall be deemed guilty of a misdemeanor."

Both of the said statutes under the Liquor Control Act specifically refer to "no person having a license under the act." Neither statute refers to an agent or employee of any person or licensee, as will be found in some statutes in the Liquor Control Act, such as referred to in your request, namely, Sections 4881 and 4885, Mo. R.S.A.

In this opinion, we are not requested to determine or pass upon the liability of the licensee who was not present, who apparently had no knowledge of such violation and who apparently did not sanction it, but the question presented herein relates to the liability of the bartender employee, who was caught in the act of disposing of liquor during a period prohibited under Section 4891, Mo. R.S.A.

One of the primary rules of statutory construction is to ascertain from language used the intent of lawmakers, if possible, and to put upon the language its plain and rational meaning in order to promote its object. (See *Donnelly Garment Co. v. Keitel*, 193 S.W. (2d) 577, 354 Mo. 1138; *Fischbach Brewing Co. v. City of St. Louis*, 95 S.W. (2d) 335, 231 Mo. App. 793.)

Another well established rule of statutory construction is that criminal statutes are to be construed liberally in favor of defendant and strictly against the state, both the charge and proof. Also that no person should be made subject of a criminal statute by implication and when doubt arises concerning their interpretation, such doubts are to be weighed only in favor of the accused. (See *State v. Bartley*, 263 S.W. 95, 304 Mo. 58; *State v. Taylor*, 133 S.W. (2d) 336, 345 Mo. 325. Also *Abbott v. Western Union Telegraph Co.*, 210 S.W. 769.)

In view of the foregoing statutes making it a misdemeanor for a person having a license (and naming no one else in the statute) to sell, give away or otherwise dispose of intoxicating liquor during certain restricted periods and further in view of numerous instances in statutes under the Liquor Control Act, wherein the legislature has included agents and employees along with the licensee, we are inclined to believe that the provision of such statute hereinabove referred to do not apply to such employees as the bartender, in the instant case.

However, while Sections 4891 and 4892, supra, did not specifically make it a misdemeanor for an employee of a licensee caught in the act of disposing of liquor during such restricted period, such statutes do definitely prohibit the sale, gift or disposition of intoxicating liquor on licensed premises during such restricted periods mentioned in such statutes.

Another well established rule of statutory construction is that in construing an act all parts of said act should be construed together so as to harmonize and give meaning to each and every part thereof. (See *Johnson v. Kruckemeyer*, 29 S.W. (2d) 730, 224 Mo. App. 351; *In re Kinsella's Estate*, 239 S.W. 818. Also, *State v. Wipke*, 133 S.W. (2d) 354, 345 Mo. 283.)

In view of the foregoing rule, we find Section 4881, Mo. R.S.A., which prohibits any person, agent or employee of any person in any capacity from selling intoxicating liquor except during the time and place provided in the Liquor Control Act and regulations of the supervisor. Following the last rule of statutory construction referred to, and construing Sections 4891, 4892 and 4881, Mo. R.S.A. together, we must conclude that the legislative intent was, that while Section 4891, supra, did not specifically include employees and agents of said licensee, however, Section 4891 does prohibit the sale or disposition of intoxicating liquors during those periods mentioned in said statute and under Section 4881, supra, agents and employees being prohibited from making any sales of intoxicating liquor at any other place than on the licensed premises or at any other time or otherwise than is authorized by the Liquor Control Act and regulations of the Supervisor, then we must conclude that if you can establish the fact that a sale of intoxicating liquor was made by said bartender during the time prohibiting such sales under Sections 4891 and 4892, supra, then the bartender is guilty of a misdemeanor under the Liquor Control Act. However, this only applies to a sale and not the giving away or merely disposing of said intoxicating liquors as indicated by Section 4891, supra.

Furthermore, if you find that it was a sale, then said bartender upon conviction may be found guilty of a misdemeanor under Section 4933, Mo. R.S.A. which makes it a misdemeanor for an employee to violate the Liquor Control Act.

CONCLUSION

Therefore it is the opinion of this department that if you can establish that a sale was made by said bartender at 3:50 A.M. then he is guilty of violating Section 4881, Mo. R.S.A. and is subject to a misdemeanor under Section 4933 Mo. R.S.A.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

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