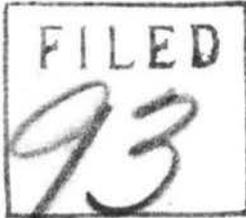


INTOXICATING LIQUOR:  
NON-INTOXICATING BEER:

A premise licensed to sell food, supply entertainment, and permit the consumption of intoxicating liquor on the premise, except on Sunday and between certain hours, may open on Sunday for the purpose of selling food and supplying entertainment, so long as it does not permit the consumption of intoxicating liquor. Also, that said premise may be kept open on Sunday even though 3.2 or non-intoxicating beer is permitted to be consumed on the premise on that day.



December 10, 1953

Honorable Wayne W. Waldo  
Prosecuting Attorney  
Pulaski County,  
Richland, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"The opinion of the Attorney General is respectfully requested on the following question:

"A person has obtained a license for certain premises in Pulaski County, Missouri under Sec. 311.480 M.R.S., 1949, for the consumption of liquor on the premises. There are other premises adjacent thereto for which a license has been obtained to sell 3.2 or non-intoxicating beer. Can the premises licensed under Section 311.480, M.R.S. 1949 for the consumption of liquor on the premises be kept open on Sunday, even though no intoxicating liquor is allowed to be consumed on the premises? Can said premises be kept open if 3.2 or non-intoxicating beer is allowed to be consumed on the premises?

"Thank you very much for your consideration in this matter."

Section 311.480 RSMo 1949, reads as follows:

"1. It shall be unlawful for any person operating any premises where food, beverages or entertainment are sold or provided for compensation, who does not possess a license for the sale of intoxicating liquor, to permit the drinking or consumption of intoxicating liquor in, on or about said premises between ten P.M. and six A.M. the following day, without having a license as in this section provided.

"2. Application for such license shall be made to the supervisor of liquor control on forms to be prescribed by him, describing the premises to be licensed and giving all other reasonable information required by the form. The license shall be issued upon the payment of the fee required herein. A license shall be required for each separate premises and shall expire on the thirtieth day of June next succeeding the date of such license. The license fee shall be sixty dollars per year and the applicant shall pay five dollars for each month or part thereof remaining from the date of the license to the next succeeding first of July. Application for renewals of licenses shall be filed on or before the first of May of each year.

"3. The drinking or consumption of intoxicating liquor shall not be permitted in, upon or about the licensed premises by any person under twenty-one years of age, or by any other person between the hours of 1:30 A.M. and 6:00 A.M. on any week day, and between the hours of twelve o'clock midnight Saturday and twelve o'clock midnight Sunday, or on the day of any general, special, or primary election in this state, or upon any county, township, city, town, or municipal election day during the hours the polls are legally open. Licenses issued hereunder shall be conditioned upon the observance of the provisions of this section and the regulations promulgated thereunder governing the conduct of premises licensed for the sale of intoxicating liquor by the drink. The provision of this section regulating the drinking or consumption of intoxicating liquor between certain hours and on election day and Sunday shall apply also to premises licensed under this chapter to sell intoxicating liquor by the drink. In any incorporated city having a population of more than twenty thousand inhabitants, the board of aldermen, city council, or other proper authorities of incorporated cities may, in addition to the license fee herein required, require a license not exceeding three hundred dollars per annum, payable to said incorporated cities, and provide for the collection thereof; make and enforce ordinances regulating the hours of consumption of intoxicating liquors on premises licensed hereunder, not inconsistent with the other provisions of this law, and provide penalties for the violation thereof. No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen

of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village.

"4. Before any application for the license provided for in this section shall be approved, the supervisor of liquor control shall require of the applicant a bond to be given to the state in the sum of one thousand dollars, with sufficient surety, such bond to be approved by the supervisor of liquor control, conditioned that the applicant shall at all times observe the provisions of this chapter and the regulations promulgated thereunder governing the conduct of premises licensed for the sale of intoxicating liquor by the drink and the regulations promulgated by him construing and enforcing the provisions of this section.

"5. Any premises operated in violation of the provisions of this section, or where intoxicating liquor is consumed in violation of this section, is hereby declared to be a public and common nuisance and it shall be the duty of the supervisor of liquor control and of the prosecuting or circuit attorney of the city of St. Louis, and the prosecuting attorney of the county in which the premises are located to enjoin such nuisance.

"6. Any person operating any premises, or any employee, agent, representative, partner or associate of such person, who shall knowingly violate any of the provisions of this section, or any of the laws or regulations herein made applicable to the conduct of such premises, shall, upon conviction, be deemed guilty of a misdemeanor.

"7. The supervisor of liquor control is hereby empowered to promulgate regulations necessary or reasonably designed to enforce or construe the provisions of this section, and is empowered to revoke or suspend any license issued hereunder, as provided in this chapter, for violation of this section or any of the laws or regulations herein made applicable to the conduct of premises licensed hereunder."

Honorable Wayne W. Waldo

The above section relates to places which do not sell intoxicating liquor, but which have a license which permits the consumption of intoxicating liquor on the premises. These places also sell food and provide entertainment. It is clear that the limitations in the statute as to hours and days of consumption on these premises applies only to the consumption of intoxicating liquor at such times, and not to the selling of food and the furnishing of entertainment. In this regard we call attention to the case of *Graff v. Priest*, 201 S.W.(2d) 945. This case is a construction of Section 311.480, supra, At l.c. 951, of its opinion, the court states:

"Plaintiff contends that the act does not regulate the drinking or consumption of alcoholic liquor, but regulates the business of providing food, beverages or entertainment. The section plainly does not regulate the business of providing food, etc.; it is only the drinking and consumption of intoxicating liquor that is regulated. There is nothing in the act that affects plaintiff's sale of food, soft beverages, and entertainment between the hours mentioned therein except as the prohibition of permitting drinking of intoxicants in plaintiff's cafe might affect the number of customers who might come between the hours mentioned, and plaintiff, in his evidence, in effect, so concedes. In his evidence he said that if the act is enforced the late crowd 'just wouldn't come.' If the effect of enforcement of the act would be such as plaintiff says and would result in pecuniary loss to him that would not make the act unconstitutional. 11 Am. Jur., Constitutional Law, Sec. 268, p. 1012; *L'Hote v. New Orleans*, 177 U.S. 587, 20 S. Ct. 788, 44 L. Ed. 899; *Erie R. Co. v. Williams*, 233 U.S. 685, 34 S. Ct. 761, 58 L. Ed. 1155, 51 L.R.A., N.S., 1097.\* \* \*"

Our answer to your first question is, therefore, that a premise licensed under Sec. 311.480, supra, may be open on Sunday, provided the consumption of intoxicating liquor is not permitted on the premises at that time.

Honorable Wayne W. Waldo

Your next question is whether these aforesaid premises can be kept open (on Sundays) if 3.2 or non-intoxicating beer is allowed to be consumed on the premises at that time. We are unable to find any law which would prohibit the consumption of non-intoxicating beer on such premises on Sunday. Sec. 311.480, supra, itself is directed only against the consumption of intoxicating liquor on such premises on Sunday and within the prohibitive hours.

#### CONCLUSION

It is the opinion of this department that the premises licensed to sell food, supply entertainment, and permit the consumption of intoxicating liquor on the premises, except on Sunday and between certain hours, may remain open on Sunday for the purpose of selling food and supplying entertainment, so long as it does not permit the consumption of intoxicating liquor. Also that said premises may be kept open on Sunday even though 3.2 or non-intoxicating beer is permitted to be consumed on the premises on that day.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON  
Attorney General