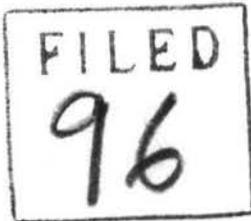


INTOXICATING LIQUORS: Regulation of Supervisor
not basis for criminal
prosecution.

JOHN M. DALTON
XXXXXXXXXX



June 6, 1953

John C. Johnsen
XXXXXXXXXX

Honorable J. Patrick Wheeler
Prosecuting Attorney
Lewis County
Monticello, Missouri

Dear Mr. Wheeler:

We have received your request for an opinion of this
office, which request reads, in part, as follows:

"Under the provisions of the Missouri
Statutes, the Supervisor of Liquor
Control is given the power to make
rules governing the sale and possession
of liquor.

"Would you kindly furnish our office
with an official opinion on the follow-
ing question:

"If a licensee violates any of the
provisions of the rules and regulations
promulgated and in effect by order of
the Supervisor of Liquor Control, may
he be criminally prosecuted? If so,
does a plea of guilty to a charge of
violation of these rules and regulations
constitute a revocation of the license
under the provisions of Sec. 312.510,
R.S. Mo., 1949?"

Section 312.360, RSMo 1949, provides, in part:

"The supervisor of liquor control shall
have the authority to suspend or revoke
for cause all such licenses and to make
the following regulations, without limit-
ing the generality of provisions empowering

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the supervisor of liquor control as in this chapter set forth, as to the following matters, acts, and things:

* * * * *

"(6) Establish rules and regulations for the conduct of the business carried on by each specific licensee under the license, and such rules and regulations if not obeyed by every licensee shall be grounds for the revocation or suspension of the license."

According to our information, your inquiry relates to a violation of Regulation No. 14(c) of the Supervisor of Liquor Control, which provides:

"(c) Loitering of Immoral Persons.--No retail licensee shall employ or knowingly allow the loitering upon or about the licensed premises of any known police character, felon, gangster, racketeer, pickpocket, swindler, confidence man, female impersonator, prostitute, narcotic addict, vagrant, delinquent minor or other degenerate or dissolute person."

Regulation No. 14 is captioned "Retailers Conduct on the Premises."

Section 312.510, RSMo 1949, provides, in part:

"1. Any violation of any of the provisions of this chapter not otherwise defined, shall be a misdemeanor, and any person guilty of violating any of said provisions, and for which violation no other penalty is by this chapter imposed, shall, upon conviction thereof be adjudged guilty of a misdemeanor and punished by a fine of not less than fifty dollars, nor more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and jail sentence."

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"Prescribing of penalties is a legislative function, and a commission may not be empowered to impose penalties for violation of duties which it creates under a statute permitting it to make rules. However, the legislature may validly provide a criminal or penal sanction for the violation of the rules and regulations which it may empower administrative authorities to enact." 42 Am. Jur., Public Administrative Law, Section 50, page 355. However, as with any criminal statute, the Legislature must clearly make violation of administrative regulations a criminal offense. This was pointed out by the United States Supreme Court in the case of United States vs. Eaton, 144 U.S. 677, in which the court stated, l.c. 688:

"It is necessary that a sufficient statutory authority should exist for declaring any Act or omission a criminal offense; and we do not think that the statutory authority in the present case is sufficient. If Congress intended to make it an offense for wholesale dealers in oleomargarine to omit to keep books and render returns as required by regulations to be made by the Commissioner of Internal Revenue, it would have done so distinctly, in connection with an enactment such as that above recited, made in Sec. 41 of the Act of October 1, 1890.

"Regulations prescribed by the President and by the heads of departments, under authority granted by Congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them, and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense."

We find, in Chapter 312, RSMo 1949, no legislative declaration that violation of the regulations of the Supervisor of Liquor Control shall be punishable as a criminal offense. Section 312.360(6), RSMo 1949, quoted above, does make violation of

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regulations for the conduct of the licensee's business, under which Regulation No. 14 would fall, grounds for suspension or revocation of licenses, but no reference whatsoever is made to criminal prosecution.

We do not feel that Section 312.510, RSMo 1949, quoted supra, can be construed to make violation of such regulations punishable criminally. That section merely prescribes the penalty for offenses covered by the act and for which the penalty has not been otherwise provided.

The Legislature has seen fit to make violation of regulations and orders of some administrative agencies in this state criminally punishable. Thus, Section 252.230, RSMo 1949, applicable to the Conservation Commission, provides:

"Any person violating any of the provisions of this chapter wherein other specific punishment is not provided, and any person violating any of such rules and regulations relating to wild life, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not exceeding three months or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment."

Section 356.580, RSMo 1949, makes violation of orders of the Public Service Commission criminally punishable. However, such provision is significantly lacking from the Non-Intoxicating Beer Law, here involved, and the failure of the Legislature to make such provision must preclude criminal prosecution as a means of enforcement of regulations promulgated under that Act.

In your letter you refer to Section 312.380, RSMo 1949. That section, however, merely provides an additional procedure for suspension and revocation of licenses. That such is its effect is clear from the title of the bill enacting it, which reads as follows:

"AN ACT to amend Article 2, Chapter 32 of the Revised Statutes of Missouri, 1939, known as the Non-Intoxicating Beer Law,

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by adding a new section to said Article 2, Chapter 32, to be known as Section 4996a, providing, in addition to the penalties and proceedings for revocation of licenses provided for in the Non-Intoxicating Beer Law, for special proceedings for the suspension or revocation of licenses because of certain violations of the Non-Intoxicating Beer Law; providing that such proceedings may be instituted by tax-paying resident citizens, the sheriff or any peace officer; providing hearings before the Circuit Court; providing for the duties of the Prosecuting or Circuit Attorney in the City of St. Louis and the Prosecuting Attorney of the Counties of the State, and providing for the taxing of the costs of such hearings." (Emphasis ours.)

(Laws of Missouri, 1943, page 614.)

The duty imposed upon the prosecuting attorney "to prosecute diligently and without delay any complaints coming to him" under this section relates to the complaints therein provided for which may be made the basis for suspension or revocation of licenses.

CONCLUSION

Therefore, it is the opinion of this office that violation of the regulations of the Supervisor of Liquor Control may not be the basis of criminal prosecution.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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