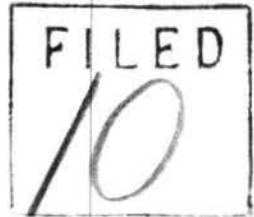


LIQUOR: Package goods dealer cannot give samples of liquor to customers and allow same to be consumed on premises.

8/9
July 19, 1940



Mr. Wallace I. Bowers
Chief Clerk, Department of
Liquor Control
Jefferson City, Missouri

Dear Mr. Bowers:

We have received your letter of July 11th, which reads as follows:

"We respectfully request an opinion on the following subject:

May a person, firm or corporation licensed to sell intoxicating liquor in the original package only give the customer a sample drink of a certain brand upon the premises covered by the permit. As we understand the question there is no sale involved, merely the breaking of an original package in order to offer the customer a sample of its contents.

We would appreciate receiving this opinion at your earliest convenience."

Section 22 of the Liquor Control Act, Laws of Missouri 1935, page 274, relating to the licenses of dealers selling liquor in the original package, reads in part as follows:

"Intoxicating liquor shall be sold at retail in the original package upon a license granted by the Supervisor of

July 19, 1940

Liquor Control, and said intoxicating liquor so sold shall not be consumed upon the premises where sold, nor the original package opened on said premises of the vendor, except as otherwise provided in this act. * * * * *

Provided, however, that no license shall be issued for the sale of intoxicating liquor in the original package, not to be consumed upon the premises where sold, except to a person engaged in, and to be used in connection with the operation of one or more of the following business: A drug store, a cigar and tobacco store, a grocery store, a general merchandise store, a confectionery and/or delicatessen store, nor to any such person who does not have and keep in his store a stock of goods having a value according to invoices of at least one thousand (\$1000.00) dollars, exclusive of fixtures and intoxicating liquors."

From the above language, we believe that it was the evident intention of the legislature that no bottles of liquor should be opened and consumed on premises covered by a package liquor license only. It will be observed that the principle business of a person licensed to sell liquor in the original package must necessarily be something other than the liquor business. The dealer must be operating a drug store, a cigar or tobacco store, a grocery store, a general merchandise or a confectionery or delicatessen, and must have a stock of such goods on hand exclusive of furniture and fixtures and intoxicating liquor of the value of at least one thousand (\$1000.00) dollars before he is even eligible to obtain a package liquor license. It seems apparent that the legislature did not intend any drinking of any kind should be done in drug stores or grocery stores under a package goods license. In this connection, the Supreme Court of Missouri en banc in the case of State vs. Wipke 133 S. W. (2nd) 354, 1.c. 357, said:

"However, we conclude that the Legislature presumed that if a person went into

July 19, 1940

a place of business where liquor was sold by the drink that he would not be shocked to find persons who were under the influence of intoxicating liquor, but if he went into a drug store or a grocery store he would certainly not expect to find such conditions existent."

The term "shall not be consumed on the premises where sold, nor the original package opened on said premises of the vendor" is a broad term and appears to cover the dealer, as well as the purchaser, and prohibits either from opening bottles of intoxicating liquor and consuming or allowing the same to be consumed on the premises. It would, therefore, make no difference whether the dealer gave drinks of liquor away as samples and free of charge. Since such drinks cannot by law be consumed on the premises, it would make no difference whether the same were given to a prospective customer, or whether the customer buys a bottle of whiskey and consumes his own liquor on the premises. The prohibited act appears to be the consumption of liquor on the premises with no distinctions made as to how or from whom the consumer receives the liquor.

CONCLUSION

We conclude, therefore, that a person, firm or corporation licensed to sell intoxicating liquor in the original package only may not give a sample drink of intoxicating liquor to a customer or prospective customer and permit and allow the same to be consumed upon premises covered by a package liquor license only.

Respectfully submitted,

J. F. ALLEBACH
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

JFA:RT