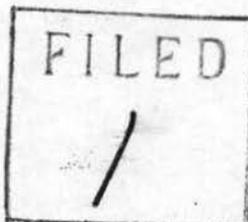


HEALTH) Daily hotels of single buildings with ten or more
HOTELS) rooms required to be licensed. License fee may not
LICENSES) be prorated.

August 30, 1949

Dr. C. F. Adams
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9/2/49

Dear Sir:

This is in reply to your request for an opinion on three different questions which we will answer in order.

I.

"1. Under the Hotel Inspection Law, Section 9931.

"May we assume that a proprietor is operating a hotel under this Section when they are advertising the establishment as such by roadside signs or signs located near the establishment, even though said establishment does not consist of ten rooms."

Section 9931, R. S. Missouri, 1939, reads as follows:

"That every building or other structure, kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, in which ten or more rooms are furnished for the accommodation of such guests, whether with or without meals, shall for the purpose of this article be deemed a hotel, and upon proper application the food and drug commissioner shall issue to such above described business a license to conduct a hotel: Provided, that it shall be unlawful for the owner of any such building or other structure to lease or let the same to be used as a hotel until the same has been inspected and approved by the food and drug commissioner."

You will note that Section 9931, supra, sets out very distinctly a definition of what establishments are to be deemed a hotel for the purpose of the article, which is basically inspection by the Division of Health. Section 9931 very clearly states that the building or structure must consist of ten rooms in order to be classed as a hotel. Certainly, with such a clear definition, all those establishments consisting or less than ten rooms would not be subject to the provisions of the section.

From a reading of the statute, it can be seen that the Legislature considered that a building might be advertised as a place where sleeping accommodations are furnished for pay, yet, it very carefully distinguished between small operators and those whose establishment consisted of ten or more rooms.

II.

"1. Under the Hotel Inspection Law, Section 9931.

"May we assume that an establishment is operating a hotel when two buildings are located adjacent to each other and separated only by a few feet and are operated together as a unit, but each building contains less than ten rooms. In this particular case there may or may not be any advertisement of rooms or as a hotel. The two buildings are operated by the same individual."

Section 9931 provides for the licensing and inspection of "Every building or other structure, kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, in which ten or more rooms are furnished for the accommodation of such guests...."

You will note that Section 9931 does not use the plural in connection with the word, "building", nor in connection with the word, "structure." It is a rule of statutory construction that words and phrases shall be taken in their plain or ordinary and usual sense. In Webster's New International Dictionary, Second Edition, the word "building" is defined as follows: "that which is built; specif.: a As now generally used, a fabric or edifice, framed or constructed, designed to stand more or less permanently, and covering a space of land, for use as a dwelling, storehouse, factory, shelter of beasts, or some other useful purpose."

We are unable to find an instance wherein the singular of "building" has been given a meaning indicating more than one. The word "structure" is defined in Webster's New International Dictionary, Second Edition, as: "Something constructed or built, as a building, a dam, a bridge; esp., a building of some size; an edifice."

Thus, in the ordinary and usual sense, "building" and "structure" are more or less synonymous. Under the word, "building" in Webster's, supra, it is said, "building, edifice, structure agree in meaning, but differ slightly in application....Structure retains more frequently than the others the sense of something constructed, often in a particular way; as, a tumble-down structure, a modern steel structure. Like edifice, structure is often used of buildings of some size or magnificence;....." Thus, we see that neither of the words used in Section 9931, in their singular form, convey the meaning of more than one.

The factual situation in the case of Porter v. Tureen, 68 Fed. Supp. 214, was very similar as in the case now before us. The question before the court was whether or not the operation of the defendant, Tureen, in the rental of certain property, fell within a rent regulation for housing. Tureen rented property located at 4250 and 4260 Lindell Blvd., City of St. Louis, to a tenant who operated the rented property as a rooming house. The property at 4250 Lindell has twenty rooms and at 4260 Lindell seven rooms on the third floor. There are two apartment houses between 4250 and 4260 Lindell. The premises had been sold a number of times, and each time as a unit. A regulation of the housing expediter provided for an exemption as follows at l.c. 215:

"This regulation does not apply to the following:

"(4) Structures in which more than 25 rooms are rented or offered for rent. Entire structures or premises wherein more than 25 rooms are rented or offered for rent by any lessee, sublessee or other tenant of such entire structure or premises: * **"

The price administrator contended that because the rooming house business was carried on in two structures, and neither structure has over 25 rooms, the rent regulation applied. The court decided the case on the interpretation of the term, "premises," but in its decision

it was stated at l.c. 215:

"It is apparent that the term 'structure' will not include the operation of the defendant * * *."

Thus, since the definition of the word, "hotel" for the purposes of Section 9931 is dependent upon a building or structure containing more than ten rooms, it is apparent that the establishment which you describe in your request should not be considered a hotel under said section.

III.

"2. Under the same Hotel Inspection Law, Section 9932 and Section 9933.

"In the event that for some reason such as failing to provide adequate fire prevention measures or provide adequate fire escapes, a hotel is not licensed until these items are complied with, if during the interim while awaiting correction the hotel should be sold, shall it be legal to require the new owner to pay the full year's license fee as set up under Section 9933, or is it permissible to pro rate the license fee on a monthly basis and charge the new owner only for the remaining year in which he will operate the hotel or rooming house. If it is necessary to pay the full year's fee or license, is it possible to legally collect such fee from the former owner of the establishment even though he is not the owner at the time the statement is presented.

"We would like to know who is responsible legally for the payment of this annual license under such circumstances."

Section 9932, R. S. Missouri, 1939, reads as follows:

"That on or before June 1st, 1917, and

each year thereafter, every person, firm or corporation now engaged in the business of conducting a hotel, and every person, firm, or corporation who shall hereafter engage in conducting such business shall procure a license for each hotel so conducted or proposed to be conducted. Each license shall expire on the 31st day of May next following its issuance. No hotel shall be maintained and conducted in this state after the taking effect of this law without a license therefor. Licenses may be transferred upon the payment of a fee of one (\$1.00) dollar to the food and drug commissioner, who shall then issue a transfer to the new proprietor for the unexpired term of said license."

Section 9933, R. S. Missouri, 1939, provides for the amounts to be paid for the license and further provides that said amounts "..... shall be paid to the food and drug commissioner before said license is issued...."

In 53 C.J.S., at page 665, the rule concerning prorating of a license fee is stated as follows:

" * * * In the absence of a provision for a pro rata license, a person taking out a license must pay the full amount prescribed even though he takes out his license after the beginning of the license year, * * *"

In the case of *Botes v. City of Franklin*, 262 S.W. 282, a license was issued in October, 1920, by the city clerk, who had authority to issue such a license, for a term not beyond the first Monday in the following January. The court applied the above cited C. J. rule from 25 Cyc. 627. Section 9932 does not provide for a pro rata license, and the language used therein indicates that the Legislature was aware that the license might issue any time during the term, as witness the language, "each license shall expire on the 31st day of May next following its issuance."

The Legislature further provided that licenses could be transferred and new licenses issued for the unexpired term of a

license. However, that is not our case. We believe that it is necessary that you require the payment of the full year's license fee before a license may be issued.

Further, we do not believe that it would be legally possible to collect the fee from the former owner of the establishment since no such remedy has been provided. Collection is enforced by refusing to issue a license before the fee is paid. The proper approach would have been for the Division of Health to enjoin the former owner from operating the hotel before properly licensed.

CONCLUSION.

Therefore it is the opinion of this office that:

- (1) A statute defining a hotel as a building containing ten or more rooms does not apply to an establishment consisting of less than ten rooms;
- (2) a statute defining a hotel as a building or other structure containing ten or more rooms does not apply to an establishment where two buildings are located adjacent to each other, but separated when both buildings contain less than ten rooms;
- (3) it is not permissible to prorate the license fee for the conducting of a hotel. The person, firm or corporation seeking the license must pay the full amount provided for in the statute.

Respectfully submitted,

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APPROVED:

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