

INTOXICATING LIQUOR: Missouri licensed wholesaler may not sell intoxicating liquor to persons other than licensed retailers

January 13, 1949



Honorable Edmund Burke  
Supervisor  
Department of Liquor Control  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office reading in part as follows:

"For the past year or more, people having only an RLD Tax Stamp issued to them in the State of Oklahoma by the Treasury Department of the United States and no other pretense of a retail license have been going to four wholesale houses in Cairo, Illinois, and purchasing large quantities of intoxicating liquor from these wholesale houses with the billing destination as somewhere in Oklahoma. The State of Illinois has not collected any tax on this liquor going into the State of Oklahoma.

\* \* \* \* \*

"One of our licensed distributors, in the State of Missouri, to wit: the 'John Doe Distributing Company,' which is owned by 'Richard Roe' and who has one place at St. Louis and another at Joplin, has asked me to request you for an official opinion as to whether or not a duly licensed Missouri wholesaler may, under his license, sell intoxicating liquor at his licensed wholesale premises to a person who has an RLD Tax Stamp issued to him by the Federal Government, at some address in Oklahoma but who has no retail dealer's license issued to him by the State of Oklahoma or by the State of Missouri, provided, of course, that the proper Missouri liquor

stamps are attached to the liquor which would be sold to such a person, and provided this liquor is to be taken to the State of Oklahoma. We are not concerned in this request as to whether or not such sale would violate any Federal law or any law of the State of Oklahoma, but this inquiry pertains only to whether such sale would violate any law of the State of Missouri, 'Mr. Roe' claims that he has checked with the Federal authorities and that they have stated to him that such sale would not violate the Federal laws: however, this is a matter between the wholesaler and the Federal enforcement officials and is not one concerning which I am asking an opinion."

We have taken the liberty of substituting the name of "John Doe Distributing Company" and the name of "Richard Roe" for those appearing in your letter.

Section 4898, Mo. R.S.A., relates to the license fees and authorization conferred under various types of permits issued by the Missouri Department of Liquor Control. Your attention is directed to the portion of the statute referred to, reading in part as follows:

"No person, partnership, association of persons or corporation shall manufacture, distill, blend, sell or offer for sale intoxicating liquor within this state at wholesale or retail, or solicit orders for the sale of intoxicating liquor within this state without procuring a license from the supervisor of liquor control authorizing them so to do. For such license there shall be paid to and collected by the director of revenue annual charges as follows: \* \* \* \* \* for the privilege of selling intoxicating liquor containing not in excess of five (5%) per cent of alcohol by weight by a wholesaler to a person duly licensed to sell such malt liquor at retail the sum of fifty (\$50.00) dollars; for the privilege of selling intoxicating liquor containing not in excess of twenty-two (22%) per cent of alcohol

by weight by a wholesaler to a person duly licensed to sell such intoxicating liquor at retail the sum of one hundred (\$100.00) dollars; for the privilege of selling intoxicating liquor of all kinds by a wholesaler to a person duly licensed to sell such intoxicating liquor at retail the sum of two hundred fifty (\$250.00) dollars; \* \* "

You will note that each of such permits authorize sales by wholesalers only to persons having retail licenses. Further, we find the following as a part of Regulation No. 6, promulgated by the supervisor of liquor control, page 109 of the Rules and Regulations of the Supervisor of Liquor Control:

"(a) Shipments by wholesalers or solicitors will be made only to licensed dealers of this or other states. A bill of lading will be secured from the carrier and kept on file for a period of two years, so that shipments can be traced by our auditors or inspectors."

From the foregoing, it is apparent that the General Assembly has seen fit to limit the sales made by wholesalers to persons holding retail permits and that this construction has been followed in the departmental regulation referred to.

We do note in your letter of inquiry that the sale described therein is proposed to be made to a person holding what is denominated as "RLD" tax stamp issued by the Treasury Department of the United States. Examination of Title 26, Section 3250, U.S.C.A., discloses that such a retail liquor dealer's stamp is merely an occupational tax imposed by the Federal government. It is not an authorization to engage in the retail selling of intoxicating liquor, but on the contrary is a mere revenue fee. Furthermore, the Congress of the United States has specifically provided, under Title 26, Section 3276, U.S.C.A., that the payment of such tax shall not be held to exempt the payer thereof from any penalty or punishment provided by the laws of any state for carrying on such business within such state, nor that the payment of such tax shall be in any manner construed to authorize the commencement or continuance of any trade or business contrary to the laws of such state. We take notice of the fact that retail sales of intoxicating liquor are not permitted under the laws of the State of Oklahoma and that no license authorizing such sales may be procured from that state.

Hon. Edmund Burke

-4-

CONCLUSION

In the premises we are of the opinion that a licensed wholesale dealer in intoxicating liquors in Missouri may not make sales of intoxicating liquor to a person who does not hold a retail liquor dealer's permit in Missouri or in some other state.

Respectfully submitted,

WILL F. BERRY, JR.  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General