

LIQUOR: State of Missouri cannot prevent shipment of liquor from out-of-state distillers direct to officers' clubs located on military reservations.

September 19, 1949

9/28/49

Mr. Covell R. Hewitt
Supervisor, Dept. of Liquor Control
State Office Building
Jefferson City, Missouri



Dear Mr. Hewitt:

We have your recent letter, which reads as follows:

"Please let me have your official opinion on the following question:

"May a distiller located outside the State of Missouri make shipments of intoxicating liquor direct to Officers' Clubs located on military reservations in the State of Missouri. Members of these Officers' Clubs contend that they are an instrumentality of the Federal Government and as such the Missouri Department of Liquor Control has no jurisdiction over intoxicating liquors consigned to said Officers' Clubs.

"Such clubs are permitted to operate without a license from the Supervisor of Liquor Control, however, they have been required to purchase all intoxicating liquors from duly licensed Missouri Wholesalers."

The first question is the correctness of the contention that such officers' clubs are federal instrumentalities. In *U. S. et al. v. Query et al.*, 37 Fed. Supp. 972, where the issue was the power of a state to tax an Army Post Exchange for selling beer, the language below was found:

"We are of the opinion that the provisions of the state (taxing) statute are not applicable to the activities of the Post Exchange, and that the order to enforce, and

the threats to enforce, constituted an interference with the activities of the United States and are unconstitutional. The President of the United States, the heads of the various departments of the United States, to whose opinions the courts always give great weight, including the attorney general, the secretary of war, and the commissioner of internal revenue, have in many instances held that Post Exchanges and their predecessors were federal instrumentalities. This court holds and declares that the findings herein and the conclusion reached apply to all of the aforementioned Post Exchanges, ship's stores and officer's clubs."

Thus, it is clear that officers' clubs, like post exchanges, ship's stores, etc., are federal instrumentalities. But the extent of their immunity from state laws in general, and the liquor laws in particular, requires further explanation and investigation. Hence, the next question to be determined is: Does the State of Missouri, through the Department of Liquor Control, have jurisdiction over federal military reservations located within its borders?

Clause 17, Section 8, Article 1 of the Constitution of the United States provides as follows:

"To exercise exclusive legislation, in all cases whatsoever, over such district * * * as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to execute like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; * * *"

In the Laws of Missouri, 1943, page 628, the lands on which are located Camp Crowder, Fort Leonard Wood, St. Louis Ordnance, St. Louis Medical Depot, and several others (see Section 3, page 629), are ceded as follows:

"Exclusive jurisdiction in and over said lands so acquired by the United States

shall be, and the same is hereby, ceded to the United States for all purposes, saving and reserving, however, to the State of Missouri the right of taxation to the same extent and in the same manner as if this cession had not been made; and further saving and reserving to the State of Missouri the right to serve thereon any civil or criminal process issued under the authority of the State, in any action on account of rights acquired, obligations incurred, or crimes committed in said State, but outside the boundaries of such lands, * * *

In *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525, the court summed up the jurisdictional effect of a cession as follows:

"When the United States acquires lands within a state by purchase, with the consent of the state legislature, for the erection of forts, magazines, arsenals, dock yards and other buildings, it has exclusive jurisdiction of the tract."

Similarly, in *Yellow Cab Transit Co. v. Johnson*, 48 Fed. Supp. 594, 597:

"Thus when the state recognizes the existing federal jurisdiction, or cedes, by legislative act, exclusive jurisdiction to the federal government over such lands, except such as it specifically reserves to itself, such act of cession establishes and limits that jurisdiction."

Also, In re *Annexation of Reno Quartermaster Depot*, 180 Okla. 274:

"Article I, Section 8 of the United States Constitution confers exclusive jurisdiction upon Congress to legislate in respect to military reservations and similar instrumentalities of the federal government, and the general school laws of this state can have no application to the military reservations located within the state."

And, in *Collins v. Yosemite Park Co.*, 304 U. S. 518:

"That whatever the status of jurisdiction existing at the time of their enactment these acts of cession and acceptance are to be taken as declaration of the agreements reached by the respective sovereignties, state and national, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park. Distinguished from the right to tax, the right to regulate the sale and use of alcoholic beverages was not reserved by the state and such regulations are not enforceable in the park. This reservation does not authorize the state to exact, for the sale or importation of alcoholic beverages in the park, the fees for licenses which are provided by Section 5."

We have now seen that officers' clubs are federal instrumentalities, hence immune to state control; that these officers' clubs are located on federal military reservations which, in the absence of a specific reservation in the act of cession, are under the exclusive jurisdiction of the federal government. One question then remains to be answered. May a distiller located outside the State of Missouri make shipments directly to these officers' clubs?

In the case of *Yellow Cab Transit Co. v. Johnson, id.*, the facts were these: The officer's club at Fort Sill, Oklahoma, ordered, through its secretary, a large assortment of liquor to be shipped to the club from Illinois; the law of Oklahoma at the time forbade shipment of liquor into the state without a permit; the state seized the liquor, resulting in this lawsuit. Excerpts from the decision in the case are set out below:

"Applying this rule, the shipment originating in East St. Louis, Illinois, and destined for Fort Sill, was in interstate commerce and would not become subject to state regulation until delivery at its destination.

"From these decisions and the language used therein, and the interpretation given by the Supreme Court of the United States of such enactments, it is plain that exclusive jurisdiction over Fort Sill is in

the United States, except for the specific reservation to serve civil and criminal process, and certain taxes, thus putting that area beyond the field of operation of its (the state's) laws, unless the jurisdiction was widened or extended over the reservation by the Twenty-First Amendment.

"The Twenty-First Amendment did not confer upon a State the power to regulate the importation of intoxicating liquors into territory over which it has ceded to the United States exclusive jurisdiction.

"The writer of this opinion may have his personal views with reference to the general policy of permitting the use of intoxicants within military reservations within so-called 'dry states,' however, the law has been declared by the Supreme Court of the United States.

"The issues must be determined in favor of the plaintiff. A mandatory injunction will issue directing defendants to return the shipment in question to plaintiff for delivery to its original destination."

It is thus conclusively established, by the above and many other federal cases, that states have no jurisdiction in the area of federal military reservations, other than that specifically reserved in the acts of cession. It is equally apparent by reading the Missouri acts of cession that no power to regulate the sale, importation or use of alcoholic beverages on federal military reservations located in this state has been reserved.

This office has previously held that the Liquor Control Act does not apply to federal military reservations. See opinion of January 18, 1940, addressed to Hon. Walker Pierce, Supervisor of Liquor Control, a copy of which is attached.

In Crater Lake National Park Co. v. Oregon Liquor Control Commission, 26 Fed. Supp. 363, the court held that the Oregon Liquor Control Act is inapplicable to Crater Lake area, which was ceded by the state and accepted by the federal government:

"It is also alleged that the defendants (Liquor Control Commission) threatened to

interrupt any attempts to bring beer and other alcoholic beverages into Crater Lake Park for resale there, whether from points within or without the state. * * * Should the State's commission persist in its avowed purpose of interfering with the transportation into the Park of beer and wines for consumption therein, reconsideration of the necessity for injunctive relief may then be warranted."

Conclusion.

It is the opinion of this office that officers' clubs on military reservations in the State of Missouri as instrumentalities of the federal government are not subject to the jurisdiction of the State of Missouri, except as specifically reserved by the act of cession. The Department of Liquor Control has no jurisdiction over the sale of liquor by such officers' clubs or the purchase by them of liquor from sources outside of the State of Missouri. However, the transportation of liquor within the state is subject to the laws regulating such transportation, even though the destination of the shipment is on a military reservation.

Respectfully submitted,

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Enc.