

INTOXICATING LIQUOR

) Supervisor of Liquor Control authorized to  
) issue five per cent beer permit for premises  
) located within 300 feet of a ~~building~~  
) building not being used regularly as a place  
) of religious worship.

March 21, 1951

3-21-51

Honorable Tom A. Shockley  
Representative, 65th General Assembly  
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion which reads:

"At Waynesville, Missouri there is what is known the Fort Wood Theater which is regularly used seven days a week, as a motion picture theater, however, on Sundays they start the show at 2:00 P. M. and at 10:00 A. M. the management permits the Catholics to conduct church in said theater building temporarily until they get there new building completed.

"Within three hundred feet of said theater building, Mr. Sam Gould has purchased the building known as the Arcade, from Mr. Tom Allen, who for years operated the tavern in same.

"The City of Waynesville has an ordinance prohibiting the issuance of a license for the sale of intoxicating liquor within three hundred feet of any church.

"Mr. Gould has applied to the Supervisor of Liquor Control for a license to sell 5% beer in said Arcade Building and the supervisor is holding up the application until he has an opinion from your department, whether or not the Fort Wood Theater Building would be a building regularly used as a church as set out in section 311.080 R. S. Missouri 1949."

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The pertinent section to be construed under your request is Section 311.080, RSMo 1949, which reads:

"No license shall be granted for the sale of intoxicating liquor, as defined in this chapter, within one hundred feet of any school, church or other building regularly used as a place of religious worship, without the applicant for such license shall first obtain the consent in writing of the majority of the board of directors of such school, or the consent in writing of the majority of the managing board of such church or place of worship. The board of aldermen, city council or other proper authorities, of any incorporated city, town or village, may by ordinance, prohibit the granting of a license for the sale of intoxicating liquor within a distance as great as three hundred feet. In such cases, and where such ordinance has been lawfully enacted, no license of any character shall issue in conflict with such ordinance while such ordinance is in effect."

No decision specifically construing the foregoing provision can be found. In construing said section, the whole section should be construed together, if possible, so as to give meaning to each word. See *Union Electric Company v. Morris*, 222 S.W. (2d) 767, 359 Mo. 564, State ex rel. *McKittrick v. Carolene Products Co.*, 144 S.W. (2d) 153, 346 Mo. 1049.

Applying the foregoing rule, the ordinance of the City of Waynesville referred to in your request cannot entirely prohibit the issuance of any liquor permit upon proper application, but only if the licensed premises are within the prohibited distance of a church as in this instance, and then only if such building is used regularly as a place of religious worship. So the question boils down to this - under the facts stated in your request, is said theater temporarily being used a few hours on Sunday each week for the purpose of holding religious services pending the completion of a new church, which construction now is nearing completion, said building all the rest of the time is being used for a theater, such a building as contemplated under Section 311.080, supra? In

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Wynnefield United Presbyterian Church v. City of Philadelphia, 35 A. (2d) 276, l.c. 277, the Supreme Court of Pennsylvania, in construing an exemption under a taxing statute, held that the occasional use of a vacant lot adjoining a church building for open air services was insufficient to bring it within the definition of a regular place of stated worship, and in so holding said:

"We may add, however, that we have also examined the record to see whether the decree assigned for error is supported by evidence on the theory on which the plaintiff proceeded in the court below and must conclude that the evidence does not support the decree, and, for that reason also, we should have been required to sustain these appeals.

"In the opinion filed in disposing of the exceptions to the adjudication, the learned court said: 'Exception, however, has been taken to finding of fact No. 8, to wit: 'The lot sought to be taxed is reasonably necessary for the occupancy and enjoyment of the church building, to provide a means of ingress and egress for the congregation and to permit the church structure as built, to have sufficient light and air.'" In our opinion the sole issue presented herein devolves upon the finding of fact last quoted.' The occasional use of the lot for open air services was not sufficient to bring the vacant lot within the definition of a 'regular place of stated worship.' Our examination of the evidence on the 'sole issue' specified by the learned court, requires us to conclude that it does not support the finding that the lot is reasonably necessary as a 'means of ingress and egress for the congregation and to permit the church structure as built, to have sufficient light and air, \* \* \*.'"

In United States v. Atlantic Fruit Co., 212 Fed. 711, l.c. 713, the court, in construing the following words of a statute "regularly engaged in transportation of aliens," held that it did not mean in accordance with law, but rather continuous. In so holding, the court said: " \* \* \* Congress

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evidently intended by 'regularly' in the act under consideration a continuous employment." Also In Re Sugarek, 77 Fed. Supp. 998, l.c. 999, the court, in construing the word regular, said: "In decisions under Workmens' Compensation Acts, where questions analogous to that here in issue, are frequently considered, the term 'regular' is accepted as an antonym of 'casual' \* \* \* ."

This department on June 22, 1950, held that an application for a renewal of a retail liquor by drink permit must be denied where licensee's place of business is within one hundred feet of a church or other building regularly used as a place of religious worship without the consent of a majority of the board of directors of such church or religious worship. However, the facts that opinion was based upon were that the church was being used exclusively for religious worship, and apparently there was no ordinance passed by the law-making authorities of the City of St. Louis prohibiting the issuance of said permit. So, that opinion in no manner conflicts with this opinion.

Certainly under the facts stated herein and foregoing decisions construing "regularly," it is clearly indicated that said theater building is not being used regularly as a place of religious worship, and that said ordinance does not of itself prevent the issuance of a five per cent beer permit by the Supervisor of Liquor Control to this applicant under Section 311.030, supra, providing he meets all other qualifications under the law and regulations of the Supervisor of Liquor Control.

#### CONCLUSION

Therefore, it is the opinion of this department that under the facts stated in your request if said applicant can otherwise qualify for said permit, the mere fact temporary religious services are being held once a week in said theater, which building is otherwise used exclusively as a theater, will not of itself disqualify said applicant from obtaining a five per cent beer permit from the Supervisor of Liquor Control of the State of Missouri.

Respectfully submitted,

APPROVED:

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General

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