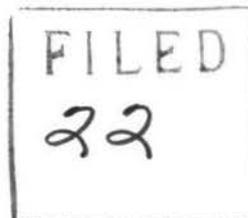


INTOXICATING LIQUOR: (1) Where an annex, which is built onto
CHURCH: a church and which becomes a part of the
PREMISE: church, is, at its nearest point, within
the prescribed distance from a premise
where intoxicating liquor is sold, that
the sale of intoxicating liquor on such
premise is illegal without consent; (2) That a building where
intoxicating liquor is sold, which at its nearest point is with-
in the prescribed distance from a church, may be partitioned and
that if after being partitioned, a premise is created which at
its nearest point is without the prescribed distance from a
church, the sale of intoxicating liquor on such premise is
legal.

September 22, 1953



Honorable Robert A. Dempster
Prosecuting Attorney
Scott County
Sikeston, Missouri

Dear Sir:

This department is in receipt of your recent request for
an official opinion. You thus state your opinion request:

"You recently forwarded me an opinion
construing section 311.080 of the liquor
law whereby the measurement was made
from the building in which intoxicants
were sold to the nearest point to a
church or school. Another question has
arisen which I would like for you to
advise me upon.

"A tavern which has been operated as such
for some 15 years was more than the pre-
scribed distance from a church. The church
recently built an annex of substantial size
which put the tavern closer than the pre-
scribed distance by measuring on a straight
line from the back door of the tavern to
the nearest point on the new church building
as extended. The owner of the building also
owns all of the fixtures in the tavern and
leases the building and fixtures to a li-
censee. The present licensee is giving up

Honorable Robert A. Dempster

the tavern and the owner of the building desires to rent the premises to a new licensee. Can a new licensee obtain a license under these facts? I desire to emphasize that this particular property has been used as a tavern for more than 15 years and that the owner of the building owns all of the fixtures. It will be a substantial loss to the owner of the building if he cannot rent this for a tavern. The church building is on property to the rear of the building which houses the tavern. The original church is without the prescribed distance but the annex as extended comes a few feet too close under the law.

"The second question is, assuming that the church is within the prescribed distance to the building occupied by the tavern, would it not be possible to partition off a portion of the building that houses the tavern thereby making the part of the building so used as a tavern without the prescribed limitation. The building I have in mind is quite large and houses a number of other businesses. The front part of the building could be used as a tavern and partitioned off from the rear and the rear of the building used for another purpose. Would you not measure from the part of the larger building that houses the tavern to the point nearest the church?"

In answer to your first question we enclose a copy of an opinion rendered by this department June 22, 1950, to Honorable Covell R. Hewitt, Supervisor of Liquor Control. We believe that this opinion answers your question in the negative, which is to say that if the nearest point of the church annex, which annex we assume has now become a part of the church, is within the prescribed distance from a premise where intoxicating liquor is sold, that the prohibition would apply, and that a license cannot be issued to such a premise in lieu of the consent by the governing body of the church.

Your second question is: "Assuming that the church is within the prescribed distance to the building occupied by the tavern, would it not be possible to partition off a portion of the building that houses the tavern thereby making the part of the building so used as a tavern without the prescribed limitation?"

Honorable Robert A. Dempster

On January 17, 1938, this department rendered an opinion to Honorable Wallace I. Bowers, Chief Cler, Department of Liquor Control, in which we held that a place may be partitioned so as to constitute two premises. A copy of this opinion is enclosed. We believe that if the building to which you refer is partitioned, as described in the above opinion, and that if the portion of the premise on which liquor is sold, is, at its nearest point, more than the prescribed distance from the church, that sale on such premise would be legal.

CONCLUSION

It is the opinion of this department, that:

(1) Where an annex, which is built onto a church and which becomes a part of the church, is, at its nearest point, within the prescribed distance from a premise where intoxicating liquor is sold, that the sale of intoxicating liquor on such premise is illegal, in lieu of consent.

(2) That a building where intoxicating liquor is sold, which, at its nearest point, is within the prescribed distance from a church, may be partitioned and that if after being partitioned, a premise is created which at its nearest point is without the prescribed distance from a church, the sale of intoxicating liquor on such premise is legal.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

HPW:lw

Enc.,