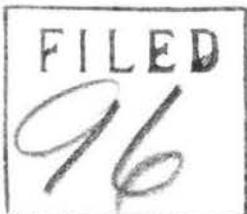


NONINTOXICATING BEER:

Prohibition against the selling of non-intoxicating beer to minors, contained in Section 312.400, RSMo 1949, not confined to licensees and their employees, but extends to all persons who are not specifically excepted by the statute.



November 17, 1953

Honorable J. Patrick Wheeler
Prosecuting Attorney of
Lewis County
Monticello, Missouri

Dear Sir:

We render herewith our opinion based upon your request of November 9, 1953, which request reads as follows:

"A question has arisen concerning the class of persons to which Section 312.400 applies. Will you kindly furnish our office with an opinion concerning this section?

"Section 312.400 recites, 'No person or his employee . . .' shall give liquor to a minor. Section 311.310 provides, 'Any licensee under this chapter or his employee . . .' who sells liquor or allows a minor to procure liquor shall be guilty of a misdemeanor.

"The question we have is whether 312.400 applies to persons other than licensees under the chapter who procure non-intoxicating beer for minors. It seems clear that 312.400 applies to the licensee who sells non-intoxicating beer to a minor, but as to other persons it is not clear."

Honorable J. Patrick Wheeler

It is our judgment that the prohibition against selling, giving or supplying of nonintoxicating beer to minors is not confined to licensees under this chapter, but applies to all persons (except where supplied for medicinal purposes, or by a parent or guardian, or by a physician.)

The argument that the statute applies only to licensees and their employees would run this way: The inclusion of the phrase "or his employee" after the word "person" in the first part of the statute indicates that the word "person" means a person having a nonintoxicating beer license, since, otherwise, the words "or his employee" would be superfluous. Since the prohibition against selling nonintoxicating beer to minors is part and parcel of the same statute, and in the passive voice, it is intended to apply to the same class of persons, i.e., to licensees and their employees only.

However, we think the word "person" is not confined to licensees. In other parts of the act which are intended to apply only to licensees, the words are "any person holding a permit authorizing the sale of nonintoxicating beer" (Section 312.390, RSMo 1949); and "no person having a license under the provisions of this chapter" (Section 312.410, RSMo 1949). Such qualifying words are absent in Section 312.400, supra.

Also, certain classes of persons are specifically excepted from the operation of that portion of Section 312.400 prohibiting supplying to minors - parents and guardians, and physicians. Having specifically excepted these, we discern a legislative intent to include all others.

CONCLUSION

The prohibition against the supplying of nonintoxicating beer to minors, contained in Section 312.400, RSMo 1949, is not confined to licensees and their employees, but extends to all persons who are not specifically excepted by the statute.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Very truly yours,

JOHN M. DALTON
Attorney General

WDK:hr