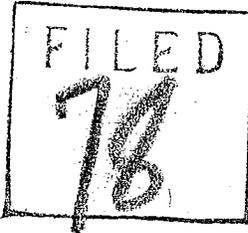


CORPORATIONS: A person (and his barmaids) selling intoxicating
CRIMINAL LAW: liquor other than malt liquor, such person hold-
LIQUOR CONTROL: ing only a malt liquor license, should be charged
with violation of Section 311.270 RSMo 1949,
rather than 311.550 RSMo 1949. The malt liquor
license of a corporation will not be automatically
revoked under the provisions of Section 311.720
RSMo 1949, unless said corporation shall have
been convicted of violating the provisions of
Chapter 311, RSMo 1949. Service of process in
a criminal action against a corporation is by
a summons, said summons to be served in the manner
provided for service on a corporation in a civil
action.



June 8, 1954

Honorable Earl Saunders
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Attention Mr. Irvin D. Emerson

Dear Sir:

By recent letter your office requested an official
opinion as follows:

"* * *The facts again briefly are that the
agents of the Department of Liquor Con-
trol inspected Quonsett Inn, Inc., a holder
of a malt liquor license only, and found
them serving whiskey highballs and consider-
able quantity of whiskey, scotch whiskey
and wine upon the premises. This corpora-
tion previously had its 3.2 beer license
revoked.

"Question 1. Can the corporation be tried
under the criminal provisions of chapter
311 Revised Statutes, 1949., and if so
what section?

"Question 2. Can the officers of the
corporation be tried under the criminal
provisions of chapter 311, R.S. Mo., 1949?
If so what section?

Honorable Earl Saunders

"Question 3. How can service be obtained in a criminal suit against a corporation?

"Question 4. Will a conviction against the officers of the corporation forfeit the license of the corporation? If not what will be necessary to forfeit the license of the corporation?

"Question 5. Is there any section other than 311.550 under which the barmaids could be charged with a misdemeanor for the sale of liquor? If so what section."

Your questions No. 1 and No. 2 as to the criminal liability of a corporation and its officers are answered by a previous opinion of this office rendered to Honorable Walker Pierce, Supervisor, Department of Liquor Control on July 24, 1939, and an opinion rendered to Honorable Joseph L. Gutting, Prosecuting Attorney of Clark County, on March 23, 1937. Copies of these opinions are enclosed.

In answer to your question No. 3 as to service on a corporation, you are referred to Supreme Court Rule 21.10, which reads as follows:

"If a corporation is charged with the commission of a criminal offense in any complaint, information or indictment, a summons shall be issued thereon which shall recite the substance of the offense charged and shall command the corporation to appear at a time and place stated therein. Such summons shall be served in the manner provided for service on a corporation in a civil action."

Provision for service of process in civil cases is made by Section 506.150 RSMo 1949 which reads as follows:

"The summons and petition shall be served together. Service shall be made as follows:

* * * * *

"(3) Upon a domestic or foreign corporation or upon a partnership, or other unincorporated

Honorable Earl Saunders

association, when by law it may be sued as such, by delivering a copy of the summons and of the petition to an officer, partner, a managing or general agent, or by leaving the copies at any business office of the defendant with the person having charge thereof, or to any other agent authorized by appointment or required by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

* * *

Section 311.720 provides for automatic revocation of the license of a person convicted of violation of Chapter 311. Said Section reads as follows:

"Conviction in any court of any violation of this chapter shall have the effect of automatically revoking the license of the person convicted, and such revocation shall continue operative, until said case is finally disposed of, and if the defendant is finally acquitted, he may apply for and receive a license hereunder, upon paying the regular license charge therefor, in the same manner as though he had never had a license hereunder; provided, however, that the provisions of this section shall not apply to violations of section 311.070, and violations of said section shall be punished only as therein provided."

It must be noted that the above Section provides for automatic revocation only upon conviction of a person. The word "person" as used in Chapter 311 includes corporation according to Section 311.030, RSMo 1949.

"The term 'person' as used in this chapter shall mean and include any individual, association, joint stock company, syndicate,

Honorable Earl Saunders

copartnership, corporation, receiver, trustee, conservator, or other officer appointed by any state or federal court."

If the corporation itself is not convicted, automatic revocation of its license will not ensue. If the corporation is convicted of violating the provisions of Chapter 311, its license will be automatically revoked.

In your question No. 5 you inquire whether there is any Section other than Section 311.550 under which the barmaids could be charged with the illegal sale of liquor. You stated in your letter that the corporation in question is the holder of a license for the sale of malt liquor. Section 311.270 makes it a misdemeanor for a person holding only a malt liquor license to sell any intoxicating liquor other than malt liquor. That Section in part reads as follows:

"1. It shall be unlawful for any person, holding a license for the sale of malt liquor only, to possess, consume, store, sell, or offer for sale, give away or otherwise dispose of, upon or about the premises mentioned in said license, or, upon or about said premises, to suffer or permit any person to possess, consume, store, sell or offer for sale, give away or otherwise dispose of, any intoxicating liquor of any kind whatsoever other than malt liquor brewed or manufactured by the method, in the manner, and of the ingredients, required by the laws of this state. Whoever shall violate any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof by any court of competent jurisdiction shall be punished as in this chapter provided as to misdemeanors. Upon such conviction becoming final, the license of the person so convicted shall forthwith, and without other or further action, order or proceeding, be deemed to have been revoked, and shall by the licensee be forthwith surrendered to the supervisor and canceled."

* * * *

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Section 311.550 makes it a felony to sell intoxicating liquor without a license authorizing the sale thereof.

That Section reads in part as follows:

* * *

"7. Any person who shall sell in this state any intoxicating liquor without first having procured a license from the supervisor of liquor control authorizing him to sell such intoxicating liquor shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than two years nor more than five years, or by imprisonment in the county jail, for a term of not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment."

To determine under what Section you should proceed in a criminal action against the parties here involved, it is necessary to consider the parts of Section 311.270 and Section 311.550 noted above. It is a fundamental rule of statutory construction that all statutes applicable to a given subject must be read and considered together and, if possible, harmonized. *State v. Naylor*, 328 Mo. 395, 40 S.W.2d 1079. It is another fundamental rule of construction of criminal statutes that they be construed liberally in favor of the defendant, and strictly against the State. *State v. Bartley*, 304 Mo. 58, 263 S.W. 95. Therefore, in considering the two statutes together and construing them strictly in favor of the defendant, we conclude that the Legislature considers the offense of selling intoxicating liquor on a malt liquor license to be less heinous than the sale of intoxicating liquor by a person who has no type of license to sell any kind of intoxicating liquor.

Therefore, we conclude that a person selling intoxicating liquor other than malt liquor, holding only a malt liquor license, should be charged under the provision of Section 311.270. An employee of a person holding a malt liquor license is entitled to the protection of that license to the same extent as an employer, while said employee is engaged in selling liquor there-

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under. The St. Louis Court of Appeals in State v. Barnett, 111 Mo.App. 688, l.c. 691, made this statement on that subject:

"* *It is conceded that appellant sold the liquor as charged on May 3rd, 1903, and that May 3rd was Sunday. It is also conceded that appellant had no license himself as a dramshop keeper but that he was acting when the sale of liquor was made as the agent, servant or bartender of his employer, Ira Barnett, who was a licensed dramshop keeper.

"There can be no doubt that if the evidence had shown the sale of liquor to have been made on Saturday, May 2nd or Monday, May 4th, together with a showing that appellant was acting for his principal, and that such principal was a licensed dramshop keeper, this would have made a complete defense to this prosecution for selling without a license.* *"

CONCLUSION

It is, therefore, the opinion of this office that a person (and his barmaids) selling intoxicating liquor other than malt liquor, such person holding a malt liquor license only, should be charged with violation of Section 311.270 RSMo 1949, rather than 311.550 RSMo 1949. It is further the opinion of this office that the malt liquor license of a corporation will not be automatically revoked under the provisions of Section 311.720, RSMo 1949, unless said corporation shall have been convicted of violating the provisions of Chapter 311, RSMo 1949. Service of process in a criminal action against a corporation is by a summons, said summons to be served in the manner provided for service on a corporation in a civil action.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:lvd

Enclosures 7-24-39 to Walker Pierce
3-23-37 to Joseph Gutting