

LIQUOR CONTROL:  
INTOXICATING LIQUOR:  
NONINTOXICATING BEER:  
LICENSES:

The State Director of Liquor Control has no authority to deny a license to a person to sell intoxicating liquor or nonintoxicating beer under Section 311.060, RSMo and 312.040, RSMo, because such person has been convicted of violating a city ordinance relating to the manufacture or sale of intoxicating liquor or nonintoxicating beer.

OPINION NO. 27

February 25, 1969

Honorable Harry Wiggins, Supervisor  
State Department of Liquor Control  
Broadway State Office Building  
Jefferson City, Missouri 65101



Dear Mr. Wiggins:

This is in response to your request for an opinion from this office which in part states as follows:

"Section 311.060, Revised Statutes of Missouri, deals with the qualifications required of persons seeking licenses under the intoxicating liquor laws and Section 312.040 deals with applications under the nonintoxicating beer laws. Each section contains identical language regarding convictions:

'No person shall be granted a license hereunder. . .who has been convicted, since ratification of the twenty-first amendment to the Constitution of the United States, of a violation of any law applicable to the manufacture or sale of intoxicating liquor (or non-intoxicating beer). . .'

"The question arises whether the above section applies to conviction in municipal or city courts where violations of municipal statutes and/or ordinances are involved. There are cases where concurrent jurisdiction is involved and where local authorities wish to proceed on cases they have investigated by filing the charges in the municipal courts.

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"Since the statute specifically applies to 'any law' I would request your official legal opinion on this question."

The manufacture or sale of intoxicating liquor is governed by Chapter 311, RSMo. Section 311.050 makes it unlawful for any person, firm, partnership or corporation to manufacture or sell intoxicating liquor in any quantity without taking out a license. Section 311.060 provides in part:

"1. No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village; and no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, or a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, or who employs in his business as such dealer, any person whose license has been revoked or who has been convicted of violating such law since the date aforesaid; \* \* \*"

Section 311.220 provides in part that cities may charge for licenses issued and provides for the collection of the fee and makes and enforces ordinances for the regulation and control of the sale of all intoxicating liquors within their limits and provides for penalties for the violation of such ordinances not inconsistent with the provisions of Chapter 311, RSMo.

Section 311.880, RSMo, provides that it shall be a misdemeanor for any person to violate the provisions of Chapter 311, RSMo.

Chapter 312, RSMo, governs the manufacture and sale of non-intoxicating beer. Section 312.040 provides in part:

"No person shall be granted a permit or license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village nor shall any corporation be granted a permit or license hereunder unless the managing

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officer of such corporation is of good moral character and a qualified legal voter and tax-paying citizen of the county, town, city or village, and no person shall be granted a permit or license hereunder whose permit or license as such dealer has been revoked, or, who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, or a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor or nonintoxicating beer, or who employs in his business as such dealer, any person whose permit or license has been revoked or who has been convicted of violating such law since the date aforesaid: \* \* \*

Section 312.140, RSMo, provides that cities may charge for licenses for the sale of nonintoxicating beer within its limits and makes and enforces ordinances for the regulation and control of the sale of nonintoxicating beer within their limits not inconsistent with the provisions of Chapter 312, RSMo and provides penalties for their violation.

Section 312.500, RSMo, provides that it shall be a misdemeanor for any person to violate the provisions of Chapter 312, RSMo.

The question submitted is whether a person violating a city ordinance, enacted by the city to regulate and control the sale of intoxicating liquor and nonintoxicating beer, comes within the provisions of Section 311.060 and Section 312.040, supra, which prohibit the Supervisor of Liquor Control from issuing a license to a person who has been convicted of any law applicable to the manufacture and sale of intoxicating liquor or nonintoxicating beer. In substance the question is whether the words "any law" as used in these statutes include a municipal ordinance.

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Kasten v. Guth*, 375 S.W.2d 110. In 53 C.J.S., Licenses, paragraph 13(b), the rule of construction of statutes and ordinances regarding licenses is stated in part as follows:

"Statutes and ordinances imposing licenses and business taxes are generally to be construed liberally in favor of the citizen and strictly against the government, whether state or municipal, especially where they provide penalties for their violation. Accordingly, if the enactment is not clear and positive in its terms,

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or if it is reasonably open to different interpretations through the indefiniteness of its provisions, every doubt as to construction must be resolved in favor of the one against whom the enactment is sought to be applied."

It is our view that the statutes under consideration, since they provide for a penalty for the violation, should be strictly construed against the government and in favor of the individual.

In *Werner v. Pioneer Cooperage Company*, 155 S.W.2d 319, the St. Louis Court of Appeals construed a statute regarding Workmen's Compensation which provides as follows:

"\* \* \* 'Where the injury is caused by the failure of the employer to comply with any statute in this state, or any lawful order of the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen per cent.'"

The City of St. Louis had enacted an ordinance in regard to safety valves on a boiler with which the employer had not complied. In discussing the meaning of the statute, the court stated, l.c. 324, paragraph 8-9:

"We are of the further opinion that the Ordinance of the City of St. Louis could in no event have any application to the provisions of Section 3301, R.S.1929, now 3691, R.S.1939, which provides for a penalty for failure to 'comply with any statute in this state.' Regardless of what may be the technical meaning of the words 'statute' and 'ordinance' as used in other jurisdictions, when used in our State they have a definite and distinct meaning to both lawyer and layman; a statute being a law enacted by the State Legislature, and an ordinance being a by-law passed or ordained by a city council and under authority of a statute giving it the right to pass such ordinance. The penalty provision could only refer to the failure of an employer to comply with a statute in and of the State. Any other construction would lead to the anomalous situation of penalizing an employer engaged in business in a city which has an ordinance such as the one here relied upon, whereas other employers in the State would not be penalized for precisely the same thing. We think the penalty was designed to apply to a failure to comply with statutory law of the State."

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In State ex rel McKittrick v. Missouri Public Service Commission, 175 S.W.2d 857, the Supreme Court held the constitutional provision that the Attorney General shall perform such duties as may be prescribed by "law" means statutes enacted by the legislature.

The violation of a city ordinance is not a crime in the constitutional sense nor a misdemeanor under our criminal code. City of Ava v. Yost, 375 S.W.2d 884; Marshall v. Kansas City, 355 S.W.2d 877. Violations of municipal police regulations are not "crimes." Delaney v. Police Court of Kansas City, 167 Mo. 667, 67 S.W. 589.

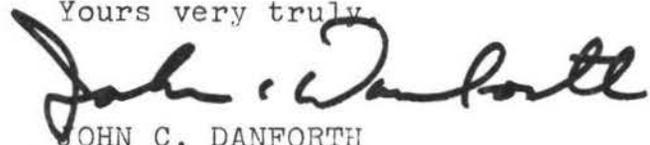
We believe that the words "any law" as used in the above statutes do not include a city ordinance because the legislature, in enacting this statute, did not intend that the words "any law" include city ordinances. We believe the word "law" as used applies only to state and federal statutes. The statutes, referred to above, that give the municipality authority to enact ordinances for the regulation and control of the sale of intoxicating liquor and nonintoxicating beer expressly provide that the city may provide penalties for their violation. We do not believe that it was intended that a violation of such ordinances should result in a denial of the issuance of a license by the Director of Liquor Control.

#### CONCLUSION

It is the opinion of this department that the State Director of Liquor Control has no authority to deny a license to a person to sell intoxicating liquor or nonintoxicating beer under Section 311.060, RSMo and 312.040, RSMo, because such person has been convicted of violating a city ordinance relating to the manufacture or sale of intoxicating liquor or nonintoxicating beer.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH  
Attorney General