

LIQUOR CONTROL--Supervisor cannot reopen, set aside or change decision
in closed case

May 7, 1938



Colonel E. J. McMahon
Supervisor of Liquor Control
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your letter of May 4, 1938, in which you request an opinion as follows:

"May the Supervisor, reopen a revocation hearing held under the provisions of Section 26 of the Liquor Control Act and 13139z-24 of the Non-Intoxicating Liquor Laws, after final decision has been rendered by him and revocation or suspension properly executed by your office has been forwarded to the licensee or defendant."

The statutes of Missouri pertaining to the regulation and control of the sale of intoxicating and non-intoxicating liquors vest the authority to carry out these statutory provisions in an officer appointed by the Governor and designated as the Supervisor of Liquor Control.

The Supervisor of Liquor Control derives his authority to revoke or suspend an intoxicating liquor license under the provisions of Section 26 of the Liquor Control Act, Laws of 1937, page 531. This section reads in part that "whenever it shall be shown, or whenever the Supervisor of Liquor Control has knowledge that a dealer licensed hereunder, has not at all times kept an orderly place or house, or has violated any of the provisions of this act, said Supervisor of Liquor Control shall suspend or revoke the license of said dealer." The same authority is given the supervisor in the identical language, with the exception of the word "suspend," over licensees under the Non-Intoxicating Beer Act by Section 13139-z-24, Laws of 1935, page 402.

These two sections are the only provisions of this law which prescribes the duties and powers of the Supervisor with reference to revoking or suspending licenses, except for Section 13, Laws of 1937, page 528, which reiterates the authority to "revoke or suspend" as set out, supra, in Section 26.

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It is from these provisions that we must determine the correct answer to your question. The Supervisor of Liquor Control holds an office created by statute, and the officer holding said office must find his authority to act in the statute. It is apparent here that the statute does not directly give the Supervisor the authority to do that contemplated by your letter.

In 46 C.J., Section 287, page 1032, it is said:

"In addition to powers expressly conferred upon him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may be fairly implied therefrom. But no powers will be implied other than those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred and imposed, and where the mode of performance of ministerial duties is prescribed, no further power is implied."

Further, in Section 290, page 1033, it is said:

"Powers conferred upon a public officer can be exercised only in the manner, and under the circumstances, prescribed by law, and any attempted exercise thereof in any other manner or under different circumstances is a nullity."

And in Section 292, page 1033, it is said:

"In the absence of statutory authority, an officer in performing a statutory duty which does not involve the exercise of discretion is without the power of amendment; and when the judgment or discretion of an executive officer has been completely exercised in the performance of a specific duty, the act performed is beyond his review or recall, although the statute conferring authority expressly makes his determination discretionary."

Applying these excerpts from Corpus Juris to the present question, we see that the legislature has prescribed the mode in which a licensee is to be punished for violation of the law - that is, revocation or suspension of his license by the Supervisor - thus, "no further power can be implied," but he must exercise this power "only in the manner . . . prescribed by law." When a hearing is had and a finding of guilty made with an order assessing the punishment issued pursuant to said hearing, the supervisor has, under the statutes completely

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exercised his judgment or discretion in the performance of a specific duty - that of punishing a violator - and "the act is beyond his review or recall."

CONCLUSION

Therefore, it is the opinion of this department that once the Supervisor has made a definite finding of the guilt of a person holding a license for violating the liquor laws, and assessed the punishment that person is to receive for said violation, he no longer has any power or authority to reopen, set aside or change said order.

Respectfully submitted,

Tyre W. Burton
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

Supplement to opinion to Colonel E. J. McMahon, dated May 7, 1938

The following additional authorities support the foregoing conclusion:

In *Garfield v. United States ex rel. Goldsby*, 30 App. Cases (D. C.) l.c. 183, it is said:

"It is * *well settled * *, when the judgment or discretion of an executive officer has been completely exercised in the performance of a specific duty, the act performed is beyond his review or recall, unless power to that extent has also been conferred upon him."

In *Cress v. State*, 152 N.E. 822(Ind.) the court, in discussing the power of an officer to undo an act completed, said l.c. 826:

"And power to undo an act once done will not be implied from the mere grant of power, in the exercise of a sound discretion, to do the act."

In *Throop's Public Officers Section 564*, p. 534, it is stated:

"* * *where a quasi judicial power has been exercised, upon which a private individual has acquired rights, the rule is the same, as where a judgment has been rendered by a court of inferior and limited jurisdiction

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that is, that the officer or body can exercise the power only once, and cannot afterwards alter his or its decision."

In *People v. Cantor*, 180 N.Y.S. 1.c. 155, it is said:

"It is true that, where quasi judicial power is conferred upon an administrative officer or body, the exercise of such power is not generally subject to review by the official or the board making the determination, unless the power of review is also conferred by the statute. (Case cited) The question always is whether the power conferred was in its nature quasi judicial or merely administrative; and the answer to that question depends upon the proper construction of the statute conferring the power."

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