

LIQUOR BONDS: A new liquor bond cannot be required of a liquor dealer before resuming business after a suspension of his license unless a court has prior thereto declared the bond forfeited.

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Hon. Walker Pierce
Supervisor of Liquor Control
Jefferson City, Missouri

Dear Sir:

We have received your recent letter which reads in part as follows:

"As a result of the opinion of the Supreme Court in the case of State of Missouri vs. Wipke and Reserve Mutual Casualty Company, I present this question:

"Assuming that at a hearing before the Supervisor of Liquor Control there is substantial evidence that the permittee has violated a provision of the liquor law sufficiently to cause the Supervisor to suspend the operations under the permit, is it within the discretion of the Supervisor of Liquor Control to require of the permittee a new bond before he again undertakes the operations authorized by the permit?"

Section 13a of the Liquor Laws, Laws of Missouri, Extra Session 1933-34, page 82, provides that all dealers licensed to sell liquor by the drink for consumption on the premises where sold shall, in each instance, give a bond in the sum of \$2,000.00. This section reads in part as follows:

"In each instance, a bond in the sum of two thousand (\$2,000.00) dollars, with sufficient surety, to be approved by the Supervisor of Liquor Control, must be given for the faithful performance of all duties imposed by law upon the licensee, and for the faithful performance of all the requirements of this act, * * * ."

The bonds required of all other liquor dealers, that is, those who do not sell liquor by the drink for consumption on the premises, are provided for in Section 19 of the Liquor Laws, Laws of Missouri, Extra Session, 1933-34, page 83. This section reads in part as follows:

"Before any application for license shall be approved the Supervisor of Liquor Control shall require of the applicant a bond, to be given to the state, in the sum of Two Thousand Dollars, with sufficient surety, such bond to be approved by the Supervisor of Liquor Control, conditioned that the person obtaining such license shall keep at all times an orderly house, and that he will not sell, give away or otherwise dispose of, or suffer the same to be done about his premises, any intoxicating liquor in any quantity to any minor, and conditioned that he will not violate any of the provisions of this act and that he will pay all taxes, inspection and license fees provided for herein, together with all fines, penalties and forfeitures which may be adjudged against him under the provisions of this act."

It will be observed in each of the above statutes that the Supervisor of Liquor Control shall require "a bond" from each applicant in the sum of \$2,000.00. It does not appear that the Supervisor has been given any statutory right to exact more than one bond in connection with each license.

As to the powers and duties of a public officer, we find the following in 46 C.J. 1033:

"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."

Therefore, since the powers of a public officer can be exercised only under the circumstances as prescribed by law, and since the Supervisor of Liquor Control is permitted only to require one bond in the sum of \$2,000.00, it would appear that a second bond cannot be required of a dealer while the first bond is on file and in full force and effect unless the Supervisor has the power and authority to work an actual forfeiture of the first bond at the time he suspends the license.

We are convinced that he does not have this authority. The Legislature has never given the Supervisor either a direct or an implied right to forfeit such bonds. He is given the right to hear evidence on violations of the liquor laws by licensees, and can either revoke or suspend the licenses after a hearing. However, the Legislature has not said that his findings, as to whether the laws were violated or not, are sufficient in themselves to work a forfeiture.

This power to declare forfeitures appears to remain with the courts, and of course the courts may or may not see eye to eye with the Supervisor on the evidence presented. Suppose the Supervisor should find a licensee

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guilty of a violation of law and, as a result, should suspend the license for a period of thirty days. Suppose, further, that a suit were brought on the bond in the circuit court to declare a forfeiture thereof and that the court should find that the licensee did not violate the law and that the bond should not be forfeited. It would follow, then, that the original bond had been at all times adequate and sufficient, and since the Supervisor has no authority to require two bonds in connection with one license, each in the sum of \$2,000.00, his action in requiring the second bond under such circumstances would undoubtedly be a "nullity". It necessarily follows that an unforfeited bond is sufficient after the period of a suspension of a license to meet the requirements of the law, and it remains so until a forfeiture has been actually declared by a court of competent jurisdiction.

Since the Supreme Court of Missouri has handed down its recent decision in the case of State v. Wipke, 133 S.W. (2nd) 354, which involved a forfeiture of a liquor bond, it appears to be clear that the courts only can declare such forfeitures.

CONCLUSION.

We conclude, therefore, that a liquor licensee may resume the selling of intoxicating liquor after the period of any suspension given by the Supervisor of Liquor Control under the original bond on file with the Department of Liquor Control, provided the same has not prior thereto been declared to be forfeited by a court of competent jurisdiction.

Respectfully submitted,

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APPROVED By:

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