

LIQUOR:

Manufacturers of 5% beer who also sell as wholesalers must secure four licenses from Supervisor of Liquor Control.

February 5, 1940



Honorable Walker Pierce  
Supervisor of Liquor Control  
Jefferson City, Missouri

Dear Sir:

We have received your recent letter which reads as follows:

"Some time ago I received the following letter from Mr. Mills, Secretary of the Anheuser-Bush, Inc.:

'I hand you herewith the following documents to be used in renewing our Wholesaler's license for the premises, 721 Pestalozzi Street, St. Louis, Missouri:

(1) Application as a wholesaler of intoxicating liquor containing not in excess of 5% alcohol by weight, for the period September 6, 1939 to September 6, 1940.

(2) Check in the amount of \$50.00 payable to the Supervisor of Liquor Control, Jefferson City, Missouri, in payment of the fee for the above license.

(3) Bond in the penal sum of \$2,000.00 to support the above license.

'In making the above application, I call your attention to the fact that we have not included in this application request for renewal of our Solicitor's license No. BS 264-A, which expires September 6, 1939. Our reason for not doing so is that Anheuser-

Busch, Inc., 721 Pestalozzi Street holds Solicitor's license BS-10 which will not expire until January 1, 1940. It would appear that Anheuser-Busch, Inc., as a brewer should obtain the following licenses in order that it might manufacture 5% beer and sell it to wholesalers and retailers:

AS DEFINED BY SECTION 21  
OF THE LIQUOR CONTROL ACT.

TYPE OF LICENSE

Manufacturer's License	For the privilege of manufacturing and brewing in this state malt liquor containing not in excess of five (5%) per cent of alcohol by weight the sum of two hundred (\$200.00) dollars;
Solicitor's License	For the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of malt liquor containing not in excess of five (5%) percent of alcohol by weight, to, by or through a duly licensed wholesaler within this state, the sum of fifty (\$50.00) dollars;
Wholesaler's License	For the privilege of selling intoxicating liquor containing not in excess of five (5%) percent of alcohol by weight by a wholesaler to a person duly licensed to sell such malt liquor at retail, the sum of fifty (\$50.00) dollars.

The following licenses were issued to Anheuser-Busch, Inc., 721 Pestalozzi Street, St. Louis, Missouri, during the past year:

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<u>No.</u>	<u>TYPE OF LICENSE</u>	<u>FEE</u>	
EM 1	Manufacturer	\$200.00	Jan. 1, 1939 to Jan. 1, 1940
BS-10	Solicitor	50.00	Jan. 1, 1939 to Jan. 1, 1940
BW 226A	Wholesaler	50.00	Sep. 6, 1938 to Sep. 6, 1939
BS 264-A	Solicitor	50.00	Sep. 6, 1938 to Sep. 6, 1939

'It has always been my contention that we should not be required to obtain more than one (1) solicitor's license for Anheuser-Busch, Inc., at 721 Pestalozzi Street, St. Louis, Missouri. As you will recall, the requirement for a solicitor's license became effective in 1937 and we immediately obtained a solicitor's license which was issued for the period September 6, 1937 to September 6, 1938. On December 20, 1937, when we sought to renew our Manufacturer's license for the period January 1, 1938 to January 1, 1939, we wrote to the Department of Liquor Control, 1211-12 Mart Building, St. Louis, Missouri, submitting application accompanied by the \$2,000.00 Bond and our check in the amount of \$200.00 covering the fee for a Manufacturer's permit. My letter of transmittal included the following paragraph with respect to the Solicitor's license:

"Inasmuch as we hold a Solicitor's license issued by the Department of Liquor Control of Missouri, for the period September 6, 1937, to September 6, 1938, the number of which is BS 130, we are applying at this time only for renewal of our permit to manufacture 5% beer, and have changed the application blank accordingly."

'On December 27, 1937 I received a reply from Mr. Richard F. Surkamp of the Department of Liquor Control, Jefferson City, Mo., advising that we must obtain additional Solicitor's license. I did not desire to delay the renewal of our Manufacturer's permit so we complied with the instructions as set out in the letter written by Mr. Surkamp. We have since that time obtained two Solicitor's licenses each year.

'However, I do not feel that there is anything in the Liquor Control Act to sustain the decision as set out in Mr. Surkamp's letter.

'If you agree with my contention, as to the above, it would appear that Anheuser-Busch, Inc., is entitled to a refund of \$100.00 for the additional Solicitor's licenses which we obtained for two consecutive years acting on instructions issued by the Department of Liquor Control.

'When the new Wholesaler's license has been issued, please send it to me at this address.'

"You will observe that Mr. Mills asks a very disconcerting question and I am anxious to have your opinion. It is my view that it is necessary for Mr. Mills to have the license in question in order that there be no discrimination between his firm and the outside firms."

It appears that the Anheuser-Busch, Inc. is a manufacturer of beer and is also engaged in selling beer as a wholesaler to retail dealers. The question is then, how many licenses must the Anheuser-Busch, Inc. obtain from the Supervisor of Liquor Control to cover all of these activities?

Section 21 of the Liquor Control Act, Laws of Missouri, 1937 p. 529 provides for the several licenses required of liquor manufacturers and dealers. Confining the question to the manufacture and sale of malt liquor containing not in excess of five (5%) per cent of alcohol by weight, the portions of Section 21 are applicable as follows:

- "(1) For the privilege of manufacturing and brewing in this state malt liquor containing not in excess of five (5%) per cent of alcohol by weight the sum of two hundred (\$200.00) dollars \* \* \* \* \*
- (2) For the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of malt liquor containing not in excess of five (5%) per cent of alcohol by weight, to, by or through a duly licensed wholesaler within this state, the sum of fifty (\$50.00) dollars \* \* \* \* \*
- (3) for the privilege of selling intoxicating liquor containing not in excess of five (5%) per cent of alcohol by weight by a wholesaler to a person duly licensed to sell such malt liquor at retail the sum of fifty (\$50.00) dollars. (numbering ours.)

The first part quoted above definitely requires a manufacturer's license, the cost of which is \$200.00 annually. The second part provides for two different and separate licenses, each of which cost \$50.00 annually. The first of these two is a manufacturer-solicitor's

license, which authorizes a manufacturer to solicit and sell to a person holding a wholesaler's license. The second license provided for in part two is a wholesaler-solicitor's license authorizing the wholesaler to solicit orders from the retailer. The third part provides for a wholesaler's license as such, at an annual cost of \$50.00. Therefore, Anheuser-Busch Inc., must obtain four licenses under the setup you outline.

We are convinced that part two above does provide definitely for two separate and distinct solicitors' licenses. Suppose a manufacturer in this state should not be interested in, or have any connection whatsoever with any wholesale establishment. In order to solicit orders from independent wholesalers, the manufacturer would have to have two licenses, one to manufacturer and the other, under part two above a solicitor's license to solicit orders from duly licensed wholesalers. This manufacturer-solicitor's license would cost the manufacturer \$50.00 annually. An independent wholesaler then must procure two licenses to enable him to sell and solicit orders from retail dealers. Part three above appears to require a wholesaler's license as such, and part two states that a wholesaler-solicitor's license must be obtained "for the privilege of \* \* soliciting orders \* \* by \* \* a duly licensed wholesaler within this state. \* \*."

Therefore, since a manufacturer and wholesaler entirely independent of each other are required by Section 21 to secure four licenses, that is two licenses each, we do not think the legislature intended to discriminate in favor of the manufacturer and require one license less in the event the manufacturer also operated a wholesale business. In the case of the independent wholesaler, he would have no need whatsoever for a manufacturer-solicitor's license as is provided for also in part two. All such wholesaler would need is a wholesaler-solicitor's license also provided for by part two, which would enable him to solicit orders from the retail trade.

Section 21 provides further as follows:

"Provided however, that a license authorizing the holder to sell to duly licensed wholesalers and to solicit orders for sale of intoxicating liquor, to, by or through a duly licensed wholesaler shall not entitle the holder thereof to sell within the State of Missouri, direct to retailers. Provided further, a wholesaler's license shall not authorize or entitle the holder thereof to sell to

other wholesalers or to solicit orders for the sale of intoxicating liquors, to, by or through a duly licensed wholesaler, within this state."

In other words, a manufacturer cannot sell direct to retailers, but must confine his sales to wholesalers only. A manufacturer-solicitor's license as such, does not authorize anyone to sell direct to the retailer.

Section 30D of the Liquor Laws, Laws of Missouri, 1935, p. 278 then provides in part as follows:

"It shall be unlawful for any person in this state holding a retail liquor license to purchase any intoxicating liquor except from, by or through a duly licensed wholesale liquor dealer in this state \* \* \*"

In another communication from you, we are informed that the Department of Liquor Control, since its beginning has always construed Section 21 to require two licenses each from the manufacturer and wholesaler, and that such licenses have always been obtained by the dealers involved. As the Supreme Court of Missouri said in the case of *In Re Bernays' Estate*, 126 S. W. (2d) 209, l. c. 217:

"It is true that the construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous. \* \* \*"

#### CONCLUSION

A manufacturer of malt liquor containing not in excess of five (5%) per cent of alcohol by weight in this state who also is licensed as a wholesaler must annually obtain four licenses

Hon. Walter Pierce

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from the Supervisor of Liquor Control. He must obtain a manufacturer's license, a manufacturer-solicitor's license, a wholesaler's license and a wholesaler-solicitor's license.

Respectfully submitted,

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J. F. ALLESBACH  
Assistant Attorney-General

APPROVED:

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W. J. BURKE  
(Acting) Attorney-General

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