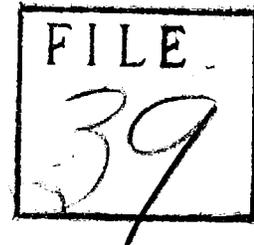


NON-INTOXICATING BEER: License may be issued to person whose license was revoked prior to Oct. 10, 1941, not if
LICENSE: revoked thereafter. License may be issued to
PREVIOUS REVOCATION: person whose intoxicating liquor license has been revoked, and vice versa.

December 29, 1941

Honorable W. D. Henderson
Supervisor of Liquor Control
Jefferson City, Missouri



Dear Sir:

This is in reply to your request for an official opinion by your recent letter which is in the following terms:

"I respectfully request an official opinion relative to the provisions of Section 4952 a, revised statutes of Missouri 1939, with respect to qualifications for a non-intoxicating beer permit.

"This section states briefly that no person shall be granted a permit or a license hereunder whose permit or license as such dealer has been revoked or who has been convicted since the ratification of the 21st Amendment in the Constitution of the United States of a violation of the provisions of any law applicable to the manufacturing or sale of intoxicating liquor or non-intoxicating beer

"Does this section prohibit a person from obtaining a permit whose permit has been revoked prior to October 10, 1941, the date this law became effective?

"In this same connection, if an applicant for a 3.2% beer permit had suffered a revocation of a 5% permit prior to October 10, 1941, would this revocation

prohibit him from obtaining a 3.2% beer permit?

In view of the fact that this question arises daily, I would appreciate this opinion as soon as possible."

Laws of Missouri, 1941, p. 411, 412, provides in part:

"That Article 2, Chapter 32, R. S. Mo. 1939, be, and the same is hereby amended by adding a new section to said Article to be known as Section 4952a, relating to the qualifications and requirements of persons or corporations for permits or licenses to manufacture, brew or sell nonintoxicating beer, * * * so that said new section of said Article and Chapter shall read as follows:"

Said Section 4952a in part provides:

" * * * and no person shall be granted a permit or license hereunder whose permit or license as such dealer has been revoked, * * * "

(Such a license can be revoked only by the Supervisor (Section 4996, R. S. Mo. 1939)).

Of course, that new statute amended the Non-Intoxicating Beer Law, and became effective October 10, 1941. Under the law prior to said amendment, a license to sell non-intoxicating beer could be issued to a person whose license to sell such beer had previously been revoked. The first question is, under the new amendment, may a license now be issued to a person whose non-intoxicating beer license

was revoked prior to October 10, 1941? In other words, is that statute retrospective or prospective? The statute contains no express provision in that respect. It is well settled that in case of doubt and absent express provisions in that regard, statutes are construed by the courts as being prospective instead of retrospective. In Mott Store Co. v. St. Louis & S. F. R. Co., 254 Mo. 654, 158 S. W. 108, the Supreme Court adopted as its own an opinion in which the Springfield Court of Appeals said (254 Mo. 1. c. 661, 662):

"Again, the law as announced in 36 Cyc. 1223, in dealing with the subject of amendatory acts, is as follows:
"Unless required in express terms or by clear implication, an amendatory act will not be given a retrospective construction. Proceedings instituted, orders made, and judgments rendered before the passage of the amendment will therefore not be affected by it, but will continue to be governed by the original statute. Where a statute, or a portion thereof, is amended by declaring that, as amended, it shall read as follows, and then setting forth the amended section in full, the provisions of the original statute that are repeated are to be considered as having been the law from the time they were first enacted, and the new provisions are to be understood as enacted at the time the amended act takes effect.""

So, in Cleveland v. Laclede-Christy Co., (1938) 113 S. W. (2d) 1065, 1. c. 1072, the St. Louis Court of Appeals said:

"By the amendment of 1931 referred to, the provision with respect to occupational diseases was merely added to

subdivision (b), but the language above quoted still remains and there is nothing in the amendment to warrant a construction that would give it a retroactive effect. The rule is well settled that statutes must be construed to operate prospectively only, unless the legislative intent to the contrary clearly appears. *Jamison v. Zausch* 227 Mo. 406, 126 S. W. 1023, 21 Ann. Cas. 1132; *State ex rel. Harvey v. Wright*, 251 Mo. 325, 158 S. W. 823, Ann. cas. 1915 A, 588. * * * "

Statutes providing a remedy in judicial proceedings are often construed to operate retrospectively (*McManus v. Park*, 229 S. W. 211, 213 (2) 214, 237 Mo. 109), but this is not a remedial statute.

On the foregoing authority it is our opinion that Section 4952a, supra, is prospective in its operation, and a non-intoxicating beer license may be issued to a person whose license to sell such beer was revoked prior to October 10, 1941. Of course, such a license may not be issued to a person whose license to sell non-intoxicating beer has been revoked subsequent to October 10, 1941.

You then ask whether a non-intoxicating beer license may be issued to a person whose intoxicating liquor license was revoked prior to October 10, 1941. On the same authority with reference to the statute being prospective, the answer is in the affirmative. There is an additional reason.

The Non-Intoxicating Beer Law and the (intoxicating) Liquor Control Act, are by their express terms separate and distinct. They were enacted at different times. The former was first enacted at the regular session of the Legislature in 1933 (Laws of Missouri 1933, p. 256-267, approved, March 15, 1933). The latter was enacted at the Special Session of 1933-34 (Laws of Missouri, Extra Session, 1933-1934, p. 77-95, approved, January 13, 1934).

The Non-Intoxicating Beer Law, in Section 4952a, supra, provides that no person shall be granted "a permit or license hereunder," whose permit or license "as such dealer" has been revoked. That refers only to non-intoxicating beer licenses, and non-intoxicating beer dealers. It does not apply to intoxicating liquor licenses and dealers. Therefore, a non-intoxicating beer license may be issued to a person whose intoxicating liquor license has been revoked. Vice versa, the (intoxicating) Liquor Control Act provides in part in Section 4906, R. S. Mo. 1939, that no person shall be granted "a license or permit hereunder," whose license "as such dealer" has been revoked. That refers only to intoxicating liquor licenses and dealers. It does not apply to non-intoxicating beer licenses and dealers. Therefore, an intoxicating liquor license may be issued to one whose non-intoxicating beer license has been revoked.

CONCLUSION

It is our opinion that the provision in the Non-Intoxicating Beer Law (Laws of Missouri, 1941, p. 411, Section 4952a) that no license thereunder shall be granted to a person whose license as such dealer has been revoked, operates prospectively from the date it became effective, October 10, 1941, and that a non-intoxicating beer license may be issued to a person whose license to sell such beer was revoked prior to October 10, 1941. A non-intoxicating beer license may be issued to a person whose intoxicating liquor license has been revoked. An intoxicating liquor license may be issued to a person whose non-intoxicating beer license has been revoked.

Respectfully submitted,

APPROVED:

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EH:VC