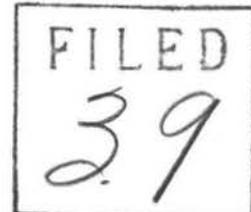


LIQUOR) When supervisor may revoke license after cancellation
BONDS) of bond.

September 27, 1943

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Hon. W. G. Henderson
Supervisor
Department of Liquor Control
Jefferson City, Missouri

Dear Mr. Henderson:

This will acknowledge receipt of your request for an opinion under date of September 24, 1943, which reads:

"I respectfully request your opinion on two matters which have arisen in this department.

"For a number of years the bond required under Sections 4890 and 4896 R. S. Missouri, 1939 have contained this provision:

" 'This bond is given and received under the express conditions that if the Surety shall so elect, this bond may be terminated by giving thirty (30) days' notice in writing to Principal named herein and to the Supervisor of Liquor Control of Missouri.' "

"In an instance where the licensee is given such notice and fails to possess a new bond there are two questions involved:

"First, Is it possible for me to treat the license as void and deny all privileges on the date of cancellation, or is it necessary that I issue a citation and revoke the license under a citation proceeding.

"Second, Since it requires a ten day notice of a citation hearing would the bonding company be liable for any action on the bond, the basis of which occurred during the 10 days required to cite the licensee."

46 C. J., Section 290, Page 1033 states the general and fundamental rule that a public officer can exercise only such authority as granted by the Statute and Constitution and reads in part:

"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 manner or under different circumstances is a nullity. * * *"

One of the cardinal rules of Statutory Construction is to ascertain the lawmakers intent from words used and give effect to same. In Wallace v. Woods, 102 S.W. (2d) 91, l. c. 95, the court said:

" 'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration. * * * ' "

Section 4905, R. S. Mo. 1939, prescribes the procedure for a suspension or revocation of a liquor license and reads:

"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, but the dealer must have ten (10) days' notice of the application to suspend or revoke his license prior to the order of revocation or suspension issuing, with full right to have counsel, to produce witnesses in his behalf in such hearing and to be advised in writing the grounds upon which his license is sought to be revoked or suspended."

Section 4896, R. S. Mo. 1939, provides as a prerequisite to obtaining a license to sell intoxicating liquor that the licensee furnish a bond and reads:

"Application for license to manufacture or sell intoxicating liquor, under the provisions

of this act, shall be made to the supervisor of liquor control. 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."

Also Section 4890, R. S. Mo. 1939, requires a licensee to furnish a bond and reads in part:

"* * * 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, and any violation of such conditions, duties or requirements shall be a breach of said bond and shall automatically cancel and forfeit the license granted hereunder: Provided, that no person financially interested in the sale of intoxicating liquor at wholesale shall be accepted as surety on any such bond."

Section 51, Page 428, 11 C.J.S., in part reads:

"General and indefinite words in the bond will be controlled by a recital specifying the time in which a condition is to be performed, and whether the liability is a continuing one, although the time will not be extended by an implied condition beyond that which it was evidently intended by the terms of the obligation to cover. If the bond on its face refers exclusively to the time of execution, then that time governs the acts and subject matter; * * *"

Since the licensee has furnished a bond approved by the supervisor of the Department of Liquor Control with a provision allowing cancellation within thirty (30) days after notice, it is the opinion of this Department that said licensee has fully complied with the Statutes and since the supervisor has only such power as granted by law he is unauthorized to suspend or revoke any license except as hereinabove provided under Section 4905, supra, which requires the giving of a ten (10) days' notice to the licensee. Such licensee has violated no provision of the laws regulating the sale of intoxicating liquor until said bond may be cancelled and said licensee fails to secure another bond. No citation or notice to appear and show cause why said license should not be revoked may issue, until such time when said licensee fails to furnish a bond then the supervisor may cite said licensee for failure to have furnished a bond.

We might suggest that you as supervisor as soon as you are notified of a cancellation of said bond, notify the licensee to secure a bond on or before time for the expiration of the present bond or you will be required to revoke said license. However, such revocation can only happen after notice and hearing to said licensee.

Conclusion

Therefore, in conclusion it is the opinion of this Department that the Supervisor of the Department of Liquor Control may only revoke any license after giving ten (10) days' notice and a hearing as provided in Section 4905 supra, that in case of cancellation of a bond after giving of notice as provided in said bond and failure of said licensee to secure another bond by the time the present bond is cancelled, the Supervisor may cite said licensee to appear within ten (10) days thereafter and show cause why his license should not be revoked, but only after the expiration of the present bond.

Respectfully submitted,

Aubrey R. Hammett, Jr.
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General