

LIQUOR CONTROL:

Minor may not be employed to make deliveries of liquor.

August 14, 1943

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Hon. Michael W. O'Hern
Prosecuting Attorney
Jackson County
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of August 4, 1943, as follows:

"Mr. Dave Witcher has requested that we write to you for an opinion with reference to the legality of a minor during the summer months when school is not in session making deliveries of beer, wines and other liquors from drug stores to the home of citizens on telephone orders.

"Mr. Witcher is the Secretary of the Tavern Owners Association of Kansas City, Missouri, and has stated to us that you furnished an opinion to Mr. Wayne G. Henderson, State Liquor Control Supervisor, to the effect that deliveries of this character were illegal."

In an opinion rendered September 13, 1940 to W. W. Graves, we held that a person holding an original package license could accept a telephone order for the sale of liquor, which was to be thereafter delivered, and not run counter to Section 4881 Mo. R. S. A. prohibiting the sale of intoxicating liquor at any place other than that designated in the license. That opinion turned on the rule that, in the absence of a special contract, a "sale" is complete when the article is identified, the price agreed upon, and said article is segregated from the general stock. Thus, a "sale" not including delivery and collection of the purchase price, the fact that the last acts enumerated occurred off the licensed premises did not cause the licensed person to violate the law.

The present question involves the last sentence of Section 4885 Mo. R. S. A. providing:

"* * * * No person under the age of twenty-one years shall sell or assist in the sale or dispensing of intoxicating liquor."

Under the rule applied in our former opinion, a minor who delivers a package of liquor from the licensed place of business of the vendor to the home of the vendee, and there collects the purchase price, would not be selling or assisting in the sale of the intoxicating liquor. But, that does not dispose of this question, because under Section 4885 the minor is also prohibited from "dispensing" intoxicating liquor and that term has a much broader meaning than does the word "sell", and hence in *Sawyer v. Frank*, 131 N. W. 761 (Iowa), where the statute prohibited the manufacture, sale, exchange, bartering or dispensing of intoxicating liquor, it was said (l. c. 762):

"* * * * The provision extends to the dispensing of such liquors and the use of the word 'dispense' in the alternative with 'manufacture, sell, exchange, barter' plainly indicates that it was not intended to describe an act which is included in selling, but, on the contrary, that the word is used to describe an independent and distinct method of being concerned in the disposal of such liquors."

The same reasoning is applicable to Section 4885, for there the word "dispensing" is used in the alternative with the word "sell", consequently, said word is intended to reach some act performed in connection with selling liquor other than the acts connected with the sale itself.

In *State v. Ball*, 123 N. W. 826, 827 (N. D.) it is said that:

"'Dispense' means to deal out in portions; to distribute; to give."

In U. S. v. Reynolds, 244 Fed. 991, the statute prohibited "dispensing" of narcotic drugs except under certain conditions. A physician wrote a prescription for a drug which was filled by a druggist. He was charged with illegally dispensing the drug. The court in sustaining a demurrer held:

"As therein used, 'dispense' relates to actual delivery of the drug by the physician to the patient, from the formers office supply * * * * *".

In 27 C. J. S. page 344 it is stated:

"In its etymological sense, the word (dispense) has been held to connote ownership, possession, or control, actual, apparent, or pretensive, in the dispenser for himself or another, and the voluntary parting with the possession, ownership or control, and actual delivery from a supply owned by the dispenser; * * * * *"

A minor, in making a delivery of intoxicating liquor, would be acting for his employer, the vendor. As noted above, the courts have held "distributing" and "delivering" to constitute acts of "dispensing". The delivery, here, is made by the minor from a supply owned by his employer; the minor has possession and control of the liquor for his employer while it is in transit, and he voluntarily parts with that possession to the vendee. The acts being performed by the vendor, by and through his agent, the minor, constitute acts of dispensing liquor by the vendor. Thus, the vendor by having his employee deliver liquor is engaged, through that employee, in dispensing the same. Since the act of dispensing is actually performed by the minor employee, said minor is employed in dispensing liquor in violation of Section 4885.

CONCLUSION

It is therefore our opinion that a licensed vendor of intoxicating liquor may not employ a minor to make delivery

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of the liquor which he sells.

Respectfully submitted,

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APPROVED:

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