

LIQUOR:

- a) Definition of "managing officer" of a corporation in licensing statute. b) A foreign corporation with resident "managing officer" of good moral character may be issued any kind of license. A foreign corporation with no resident "managing officer" may be issued a solicitor's license only.

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Honorable Edmund Burke  
Supervisor  
Department of Liquor Control  
Jefferson City, Missouri

Dear Mr. Burke:

This will acknowledge receipt of your request for an opinion on the following questions:

"Under the provisions of Section 4906, R.S. Mo. 1939: What is meant by the term 'managing officer of such corporation'? Does it mean the local manager at the place where the license is sought? Does it mean the chief manager in the State of Missouri for such corporation, and does it mean that the manager must hold some official position in the corporation, or is it sufficient that such manager is an employee only?

"Section 4906, R.S. Mo. 1939 gives me the right to issue licenses to non-residents of Missouri and foreign corporations for the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of intoxicating liquors to, by or through a duly licensed wholesaler within this state. Do I have the authority to issue to foreign corporations any other kind of intoxicating liquor license?"

Section 4906, R.S. Mo. 1939, provides as follows:

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"No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village; \* \* \* \*  
Provided, that nothing in this section contained shall prevent the issuance of licenses to non-residents of Missouri or foreign corporations for the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of intoxicating liquors to, by or through a duly licensed wholesaler, within this state."

(underscoring ours.)

By an official opinion of this Department, dated June 24, 1939, addressed to Honorable Walker Pierce, then Supervisor of the Department of Liquor Control, and, as later interpreted by the Supreme Court of Missouri in State vs. Hughes, 173 S.W. (2d) 877, it has been held that the "managing officer" of a corporation applying for a license to sell intoxicating liquor in any city, town or village in the State of Missouri, is not required to be a qualified legal voter of the county, city, town or village in which the corporation proposes to sell intoxicating liquor, but must be of good moral character and a qualified legal voter and taxpaying citizen at some place in the State of Missouri.

When the term "managing officer" is used in Section 4906, supra, we believe that it refers to a person who has been invested by a corporation with the control of the whole or particular part of its

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business, and does not mean the chief officer of such corporation. This view is recognized in *McAllister vs. Pennsylvania Insurance Company*, 28 Mo. 214, wherein the court held that a resident agent of a foreign corporation was a "managing officer" of such corporation because it being settled that, "Such agents do in fact represent the corporation here, although, in the foreign country where the corporation has been chartered and its chief place of business is, there is another chief officer of such corporation."

A "managing officer" is defined by the Supreme Court of California in the case of *Bechtel, McCone, Parsons Corporation vs. Industrial Accident Commission*, 153 P. (2d) 331, 25 Cal. (2d) 171, as "a person in the corporation's employ, either elected or appointed, who is invested with general control at a particular place of the business of the corporation."

It was further held in *California Shipbuilding Corporation vs. Industrial Accident Commission*, 149 P. (2d) 432, 64 Cal. App. (2d) 622, that such "managing officer" may be an employee.

In the case of *The Marguerite W.*, 49 Fed. Supp. 929, the court said: "A managing officer is one to whom the corporation has committed the general management or superintendence of the whole or a particular part of its business. \* \* \*".

Therefore, it will be seen that when the term "managing officer of such corporation" is used in Section 4906, R.S. Mo. 1939, which sets forth persons to whom a liquor license may be issued, it included the local manager at the place where the license is sought, or it may mean the chief manager in the State of Missouri for such corporation, and neither one of these persons needs to be an officer of the corporation.

The next question presented by your request is, whether foreign corporations may be issued any other kind of intoxicating liquor license other than a license for the privilege of selling to duly licensed wholesalers, and soliciting orders for the sale of intoxicating liquor to, by or through a duly licensed wholesaler within this State.

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The Supreme Court of Missouri in State ex rel. Klein vs. Hughes, 173 S.W. (2d) 877, l.c. 880 held:

"\* \* \* that the retail licensee cannot be a nonresident, but must be a voter or taxpayer of some county, town, city or village in the state where he resides."

On first impression this holding might be construed as meaning that a foreign corporation could not be issued a retail liquor license, but a reading of the facts in the opinion discloses that the holding dealt only with the qualifications of an individual licensee and the managing officer of a corporate licensee, and did not pass upon the question of whether a foreign corporation could be so licensed.

The proviso noted above was added to what is now Section 4096, in 1937 (Laws of Missouri, 1937, page 533). In the same year there was enacted a law which provided that, if any state by its liquor laws discriminated against intoxicating liquor manufactured in this State, or prohibited any manufacturer or wholesaler in this State from soliciting orders or selling to any licensed wholesaler in this State, then it would be unlawful to import or transport into this State any alcoholics manufactured in said discriminating State. (Laws of Missouri, 1937, page 536). The reason for the enactment of this anti-discrimination statute was that certain States were requiring persons licensed in their State to obtain a special license at an exorbitant fee for the right to sell alcoholic liquors manufactured outside of the licensing State (see Laws of Indiana, 1935, page 1093, imposing a \$1500 port of entry fee). In order that other States might not be able to declare under a like statute, that Missouri was discriminating against the sale of intoxicating liquors made by foreign corporations, the proviso in Section 4906 was added so that there would be no question as to any discrimination against nonresidents and foreign corporations.

With the history of the act, and the intention of the Legislature in mind, we look to the section to determine whether a nonresident corporation may be issued a retail or wholesale liquor license, or beer

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license. The body of Section 4906 is restrictive in that it provides that any corporation in order to obtain a liquor license must have a managing officer who is a qualified legal voter and taxpaying citizen of this State. There are no qualifying terms attached to the word "corporation" so as to require it to be a Missouri corporation; the qualifications in the act applying to the managing officer.

While it is true as said in *Brown vs. Patterson*, 224 Mo. 639, 124 S.W. 1, that a proviso in a grant or enactment is something taken back from the power first declared, however, as pointed out by Judge Graves in *Reagan vs. Iron County Court*, 226 Mo. 79, 125 S.W. 1140: "\* \* \* It is argued in this case that the first provision of this statute restricts the rights of the county court, but granting that to be true, the proviso, which is the later legislative expression, removes some of the restrictions." (emphasis ours.)

Our Supreme Court in the case of *Castilo vs. State Highway Commission*, 312 Mo. 244, 279 S.W. 673, in construing the effect of a proviso upon a restricted grant said at l.c. 677:

"\* \* \* As the first provision of section 29 in effect limits or restricts the rights of the highway commission in laying out the routes, so the proviso, which is the later legislative expression, modifies the restriction, and consequently enlarges the power of the commission. *Reagan v. County Court*, supra. It is no valid objection that the proviso conflicts in part with the enactment which precedes it. Such is the very purpose and function of a proviso, and, when the restriction laid in the main part of the act is lifted by the proviso, the whole act must be read as though the restriction never existed as to the matter covered by the proviso."

\* \* \* "

(underscoring ours.)

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Therefore, the proviso removes the restriction as to the residence of the "managing officer" in so far as it relates to a "solicitor's license".

In view of what has been said above, it will be seen that, a foreign corporation may be issued any type of license provided its managing officer as defined in the first part of this opinion is of good moral character and a qualified legal voter and taxpaying citizen of some county, town, city or village in Missouri. A foreign corporation, a managing officer of which does not meet such qualifications, may still be licensed to sell to duly licensed wholesalers in this State, and solicit orders for the sale of intoxicating liquors to, by or through duly licensed wholesalers in this State.

#### CONCLUSION.

It is, therefore, the opinion of this Department that the "managing officer" of a corporation mentioned in Section 4906, R.S. Mo. 1939, relating to the person to whom a liquor license may be issued is a person in the corporation's employ, either an officer or an employee, who is invested with the general control and superintendence of a whole or a particular part of the corporation's business at a particular place.

It is further the opinion of this Department that, under Section 4906, R.S. Mo. 1939, a foreign corporation whose "managing officer" as defined above, is of good moral character and a qualified legal voter of Missouri, may be issued any kind of license for the sale of intoxicating liquors. A foreign corporation whose "managing officer" as defined above, does not possess such qualifications may still be issued a license to sell to duly licensed wholesalers, and to solicit orders for the sale of intoxicating liquors to, by or through a duly licensed wholesaler within this State.

Respectfully submitted,

APPROVED:

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