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LIQUOR CONTROL: A licensee, convicted in a magistrate court of selling nonintoxicating beer to a minor, who files his appeal to the circuit court, has no right to operate during the time the appeal is pending, as such conviction has revoked his license as of the date of said conviction.

April 14, 1948

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H-15
Honorable B. C. Tomlinson
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Sir:

Your opinion request of recent date reads as follows:

"By the provisions of Section 4974, Revised Statutes of Missouri, 1939, it is provided that if a person is convicted of a violation of the Liquor Control Statute, his license is automatically revoked and it is further provided in said section as follows: 'If the permittee or licensee charged in such proceeding with such violation, he by final judgment therein, acquitted of said charge, he may apply for and receive a license pursuant to this article upon paying therefor the license fee in this article required, and by otherwise conforming to all requirements as to such applicants, and with the same right as though he had never held a license under the provisions of this article.'

"If a licensee is convicted of selling nonintoxicating beer to a minor in Magistrate Court and files his appeal to the Circuit Court, during the time that the appeal is pending, does the licensee have the right to operate or shall his license be revoked?"

Your question as to whether or not an appeal to an appellate court from a conviction in a magistrate court of a person holding a nonintoxicating beer license acts as a supersedeas or stay of the judgment is answered by Section 4974, R.S. Mo. 1939. Therein, in part, it provides:

"* * * If the person so convicted shall be the holder of any permit or license issued pursuant to the provisions of this article, such conviction by any court of competent jurisdiction shall, without further proceeding, action or order by any court or by the Supervisor of Liquor Control, operate to revoke and forfeit as of the date of such conviction such permit and all rights and privileges granted thereby, and the holder of such permit shall not thereafter, for a period of one year after the date of such conviction, be entitled to any permit for any person authorized in this act. If the permittee or licensee charged in such proceeding with such violation, be, by final judgment therein, acquitted of said charge, he may apply for and receive a license pursuant to this article upon paying therefor the license fee in this article required, and by otherwise conforming to all requirements as to such applicants, and with the same right as though he had never held a license under the provisions of this article." (Under-scoring ours.)

As you can see, there is no specific provision denoting an appeal is to supersede or stay the judgment of a lower court. The underlined portion above plainly states that on conviction of a violation of any provision of the nonintoxicating beer laws of the State of Missouri, such conviction acts from the date of said conviction to revoke and forfeit all rights and privileges granted by any license held under the provision of said act.

This attitude is consistent throughout the entire Liquor Control Act. Section 4905b, Laws of Missouri 1945, providing for the review of decisions of the Supervisor of Liquor Control, states specifically that, in the event of an appeal from the decision of the Supervisor of Liquor Control, said appeal does not stay the enforcement of the Supervisor's decision. Section 4946a, R.S. Mo. 1939, providing that the sheriff or any peace officer or eight or more citizens may bring charges against a

licensee for the violation of the Liquor Control Act, likewise specifically provides that the judgment of the court on said charges shall in no event be superseded or stayed during the pendency of any appeal from said judgment. Section 4996a, Laws of Mo., 1943, contains the same provision as is found in Section 4946a, supra, to-wit:

"* * * Such certification by the Supervisor shall not act as a supersedeas of any order made by him.

* * * * *

"The judgment of the Court in no event shall be superseded or stayed during pendency of any appeal therefrom."

We believe it to be obvious that the intent of the Legislature, in so implementing the Liquor Control Act of Missouri, is that an appeal either from the decision of the Supervisor of Liquor Control or from a conviction in a court of competent jurisdiction to a higher court does not act as a supersedeas or stay the judgment during the pendency of such appeal.

CONCLUSION

A licensee, convicted in a magistrate court of selling nonintoxicating beer to a minor, who files his appeal to the circuit court, has no right to operate during the time the appeal is pending, as such conviction has revoked his license as of the date of said conviction.

Respectfully submitted,

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APPROVED:

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