

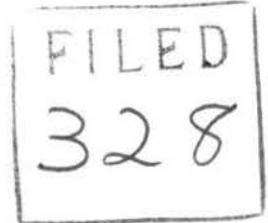
LIQUOR:  
SUNDAY SALES:

Section 311.298, RSMo 1969, applies to establishments licensed to sell 5 percent beer by the drink and such establishments can sell 5 percent beer by the drink on Sunday when December 31 falls on Sunday after 1:00 p.m. and until the time which would be lawful on another day of the week.

OPINION NO. 328

December 22, 1972

The Honorable Clinton D. Summers  
Prosecuting Attorney  
Butler County  
Courthouse  
Poplar Bluff, Missouri 63901



Dear Mr. Summers:

This opinion is in response to your request for an opinion as to whether or not Section 311.298, RSMo 1969, applies to an individual who possesses a license to sell 5 percent beer only.

Section 311.298 provides:

"When December thirty-first falls on Sunday, any person having a license to sell intoxicating liquor by the drink may be open for business and sell intoxicating liquor by the drink under the provisions of his license on that day after 1:00 p.m. and until the time which would be lawful on another day of the week, notwithstanding any provisions of section 311.290 or any other provision of law to the contrary."

The question then is whether a license to sell 5 percent beer by the drink is a license to sell "intoxicating liquor by the drink". "Intoxicating liquor" is defined in Section 311.020, RSMo 1969, as any type of alcohol for beverage purposes, and all preparation or mixtures for beverage purposes, containing in excess of 3.2 percent of alcohol by weight. Licensing provisions exist for the sale of all kinds of intoxicating liquor by the drink and also for the sale of 5 percent beer (malt liquor containing alcohol in excess of 3.2 percent alcohol by weight but not in excess of 5 percent by weight) by the drink only. The 5 percent beer license by the drink is authorized by Section 311.200, Sub. 3; a license for

the sale of all kinds of intoxicating liquors by the drink is authorized by Section 311.200, Sub. 4.

Section 311.100, RSMo 1969, specifies that the sale of any intoxicating liquor other than malt liquor in an original package containing less than one-half pint shall be deemed a "sale by the drink". With respect to 5 percent beer, Section 311.200, Sub. 2, RSMo 1969, distinguishes a sale in original package as opposed to a sale by the drink by construing the phrase "original package" as a sale of any package containing three or more standard bottles of beer.

In our opinion, the phrase "licensed to sell intoxicating liquor by the drink" as used in Section 311.298 does not refer only to those licenses allowing the sale of all kinds of intoxicating liquor by the drink. As shown by the statutory sections cited above, the Missouri Liquor Control Law provides for two types of licenses for the sale of liquor by the drink, one allowing the sale of 5 percent beer only (malt liquor) and the other for the sale of all types of intoxicating liquors. As shown by the provisions of Sections 311.090 and 311.110, the legislature is capable of distinguishing between these two types of licenses in situations deemed desirable or necessary. Since 5 percent beer is intoxicating liquor as that term is defined by Section 311.020, this leads to the inescapable conclusion that Section 311.298 applies to all establishments licensed to sell intoxicating liquors of any type by the drink.

#### CONCLUSION

It is the opinion of this office that Section 311.298, RSMo 1969, applies to establishments licensed to sell 5 percent beer by the drink and such establishments can sell 5 percent beer by the drink on Sunday when December 31 falls on Sunday after 1:00 p.m. and until the time which would be lawful on another day of the week.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard Wieler.

Yours very truly,



JOHN C. DANFORTH  
Attorney General