

CITIES, TOWNS AND VILLAGES:  
DIVISION OF LIQUOR CONTROL:  
LIQUOR:

Section 311.095 RSMo 1999 Supp.  
does not supersede Section 311.080  
RSMo 1994 as it pertains to schools

and churches.

May 31, 2000

OPINION NO. 101-2000

The Honorable David L. Reynolds  
Representative, District 77  
State Capitol Building  
Jefferson City, MO 65101

Dear Representative Reynolds:

You have written this office a letter asking whether the issuance of a resort liquor license in accordance with Section 311.095 supersedes the requirements of Section 311.080 as it pertains to schools and churches.

Section 311.080 RSMo 1994 prohibits liquor establishments within 100 feet of any school, church or other building regularly used for religious service and grants to cities, towns and villages the authority by ordinance to prohibit a license for such an establishment within a distance of 300 feet of a school, church or building used for religious service. Section 311.220 RSMo provides:

The board of aldermen, city council or other proper authorities of incorporated cities, may charge for licenses issued to manufacturers, distillers, brewers, wholesalers and retailers of all intoxicating liquor, located within their limits, fix the amount to be charged for such license, subject to the limitations of this law, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, provide for penalties for the violation of such ordinances, where not inconsistent with the provisions of this law.

Section 311.095 RSMo 1999 Supp. provides that "notwithstanding any other provisions of this chapter to the contrary" the supervisor of liquor control can issue licenses to a "resort" as that term is defined in that section. The answer to your question is

determined by the effect of the "notwithstanding" language in Section 311.095 RSMo 1999 Supp.

A recent case addressed the issue of whether the "notwithstanding" language in Section 311.095 rendered the provisions in Sections 311.080 RSMo and 311.220 RSMo 1994 of no effect. In Casey's General Store v. City of West Plains, 9 S.W.3d 712 (Mo. App. 1999) the city of West Plains prohibited liquor establishments within 300 feet of a church and prosecuted an employee of a Casey's convenience store for selling liquor when the store had a "resort" license from the supervisor of liquor control but did not have a city license. The store was within 300 feet of a church, and the city had an ordinance prohibiting the issuance of a license within that distance. Casey's claimed that the "notwithstanding" language in Section 311.095 RSMo 1999 Supp. precluded the necessity for it to obtain a city license.

In ruling in favor of West Plains and against Casey's the court reasoned that the "notwithstanding" language was not intended to "supersede the all-encompassing authority to license provided in Section 311.220 . . . we are unable to discern anything . . . which leads to the conclusion that it was intended to deprive an incorporated city of the specific authority granted in Section 311.220 to license the sale of intoxicating liquors in situations where the state had issued a 'resort' license." Casey's, supra at 719. The court also rejected Casey's argument that a resort license issued pursuant to Section 311.095 preempted and superseded the provisions of Section 311.080 and the city ordinance. Casey's, supra at 720-721.

#### CONCLUSION

Section 311.095 RSMo 1999 Supp. does not supersede Section 311.080 RSMo 1994 as it pertains to schools and churches.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General