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FILE NO. S-699

LIQUORS:

Local Option-Shifts
or Devices to Evade Provisions of
The Liquor Control Act

Honorable Michael J. Henshaw
State's Attorney
Saline County
Harrisburg, Illinois 62878

Dear Mr. Henshaw:

I have your letter in which you state that the sale of alcoholic liquor at retail within the limits of the county of Saline is prohibited by referendum and you ask three questions, which I will answer in turn.

You first ask whether the operation of a "bottle club" where an individual brings his own alcoholic liquor, deposits it with the bartender of the club and purchases individual set-ups from the bartender, constitutes a device to evade section 12 of article IX of The Liquor

Control Act. (Ill. Rev. Stat. 1971, ch. 43, par. 177.)

This section provides as follows:

"The giving away or delivery of any alcoholic liquor for the purpose of evading any provision of this Article, or the taking of orders or the making of agreements, at or within any political subdivision or precinct while such sales are prohibited, for the sale or delivery of any alcoholic liquor, or other shift or device to evade any provision of this Act, shall constitute an unlawful selling."

The Liquor Control Act does not prohibit the possession of alcohol. Section 1 of article II of The Liquor Control Act (Ill. Rev. Stat. 1971, ch. 43, par. 96) provides in part that "nothing herein contained shall prevent the possession and transportation of alcoholic liquor for the personal use of the possessor, his family and guests * * *". Therefore, a "bottle club" is not illegal per se. Whether a given system of disposing of liquor is a shift or device to evade the law is a question of fact for the jury. People v. Pankey, 349 Ill. App. 303.

The Illinois Supreme Court considered several cases concerning shifts and devices under section 13 of the 1907 Local Option Act (Laws 1907, p. 297), which is similar to our present provision. In the Town of Cortland v. Larson, 273 Ill. 602, the court determined that a club

where each individual drinks only his own liquor which has been ordered and purchased for himself in a place where it is not unlawful to sell or purchase the same, and has been forwarded and delivered to him by a common carrier and has been received, kept and stored at the club for his own individual use as a beverage, was not a shift or device to evade the Act.

For a discussion of conditions which indicate that a club is a shift or device, see People v. Gilmore, 273 Ill. 143.

Next you ask for an opinion as to whether any officer of the law who fails to act to close premises selling alcoholic liquor at retail where such sale is prohibited, would be guilty of a violation of section 14 of article IX of The Liquor Control Act. (Ill. Rev. Stat. 1971, ch. 43, par. 179.) This section provides as follows:

"Any clerk, judge of election, police officer or other officer of the law, who shall refuse or neglect or fail to discharge any duty imposed by this Article * * * shall be guilty of a violation of this Article and punishable therefor."

Honorable Michael J. Henshaw - 4.

Section 13, article IX of The Liquor Control Act (Ill. Rev. Stat. 1971, ch. 43, par. 178), provides that premises where alcoholic liquor is sold in violation of this Act are to be declared common nuisances and abated as such. Section 13 thus imposes a duty upon the proper public officials to close these premises under the proper procedure for abating a public nuisance and, therefore, under section 14, if the official fails to perform his duty, he is in violation of this section.

Thirdly, you ask whether a wholesale distributor of alcoholic beverages is prohibited from selling alcoholic beverages to retail establishments that are not licensed to sell alcoholic beverages. Section 7a of article VI of The Liquor Control Act (Ill. Rev. Stat. 1971, ch. 43, par. 126) provides:

"No manufacturer, importing distributor, distributor, or foreign importer shall sell or deliver any package containing alcoholic liquor manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the provisions of this Act."

Honorable Michael J. Henshaw - 5.

A retail establishment that is not licensed to sell alcoholic beverages would not be authorized to receive alcoholic liquor for resale and, therefore, a wholesale distributor is prohibited from selling alcoholic beverages to unlicensed retail establishments for resale.

Very truly yours,

A T T O R N E Y G E N E R A L