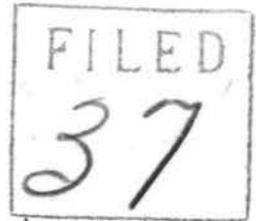


*copy by E. B. ...*  
LIQUOR LAWS: Sec. 4992, R.S. Mo. 1939, applies to the provisions of Art. 2, Chap. 32 in existence at the time said Sec. was enacted, and also applies to any provision of Art. 2, Chapter 32, enacted by the Legislature since the time of its enactment.

April 28, 1948



5-7

Honorable Leo J. Harned  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Mr. Harned:

Your opinion request of recent date reads as follows:

"Will you please inform me whether or not Section 4992, R.S. Missouri, 1939, of the Liquor Laws of Missouri, applies to liquor laws passed by the Legislature after this act was passed, or does the ordinary misdemeanor penalty apply.

"I would appreciate your opinion at your earliest convenience."

Section 4992, R.S. Mo. 1939, is contained in Article 2, Chapter 32, R.S. Mo. 1939, entitled "Non-intoxicating Beer Laws".

Section 4992, supra, was enacted, Laws of Missouri, 1935, page 395, as Section 13139z-20. Said Section is as follows:

"Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, except where the punishment is specifically prescribed by this article, and shall be punished by imprisonment in the county jail for a term of not more than one year, or by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00) or by both such fine and jail sentence."

This Section specifically provides that a violation of any of the provisions of Article 2, Chapter 32, where no specific penalty is imposed, shall be considered a misdemeanor and punished in the manner as provided therein. We deem it well to point out that in Laws of Missouri, 1933, there was enacted by the Legislature, page 264, Section 13139y, a provision providing that: "Any person convicted of the violation of any provision of this article, the violation of which is by this article defined as a misdemeanor, and for which no specific punishment is in this article provided, shall upon conviction thereof be punished as otherwise provided by law, \* \* \*". This Section was repealed by the re-enacting Act of 1939, Laws of Missouri, 1939, page 824, Section 13139y, and is now shown in the Revised Statutes of Missouri, 1939, as Section 4974, and reads, in part, as follows:

"Any violation of any of the provisions of this article not otherwise defined, shall be a misdemeanor, and any person guilty of violating any of said provisions, and for which violation no other penalty is by this article imposed, shall, upon conviction thereof be adjudged guilty of a misdemeanor and punished by a fine of not less than Fifty (\$50.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and jail sentence. \* \* \*".

It is obvious that the two sections of the Missouri Statutes, Section 4992, supra, and the above quoted part of Section 4974, are identical in purpose and content.

There are many provisions in Article 2, Chapter 32, R.S. Mo. 1939, which provide a specific penalty for a violation of said Section, such as: the penalty for evading the permit or inspection fee, Section 4971, R.S. Mo. 1939; the penalty for unlawful sale or use of stamps, Section 4969, R.S. Mo. 1939. Many provisions of Article 2, Chapter 32, R.S. Mo. 1939, do not provide a specific penalty: for example, Section 4963, R.S. Mo. 1939, provides how beer shall be sold but establishes no penalty for a violation of said Section; Section 4980, R.S. Mo. 1939, makes it unlawful to use materials other than those named in the Section in the manufacture of beer, but provides no specific penalty for the violation of said Section.

Support for the reasoning outlined above is found in the case of State vs. Cox, 234 Mo. 605. While it is true that this case is not concerned with the Liquor Control Act, it does denote what we believe to be the proper legal principle. In that case the defendant was found guilty of obstructing a police officer in the discharge of his official duty as prohibited by Section 4363, R.S. Mo. 1909. The defendant was convicted and appealed to the Supreme Court. One of the contentions raised by the defendant was that Section 4363, R.S. Mo. 1909, prohibiting the obstruction of officers in the discharge of their official duties could not apply to an officer seeking to enforce the primary election law because such primary law was enacted subsequent to said Section 4363. The Court, in answering this contention, made the following observation, l.c. 610:

"\* \* \* The primary election law makes no special provisions for its enforcement, hence the courts will assume that the aforesaid section in regard to obstructing officers was meant to apply arrests for its violation. To rule otherwise would be equivalent to saying that every time a new criminal statute is enacted, before it could be enforced, the whole body of the criminal procedure must be amended or re-enacted; otherwise it would not apply to such new law. We are of opinion that in enacting section 4363, supra, it was intended by the General Assembly that it should apply to all future arrests and prosecutions, whether for violation of laws thereafter enacted or statutes then in existence. \* \* \*".

CONCLUSION.

It is, therefore, the opinion of this Department that Section 4992, R.S. Mo. 1939, applies to the provisions of Article 2, Chapter 32, in existence at the time said Section was enacted, and also applies to any provision of Article 2, Chapter 32, enacted by the Legislature since the time of its enactment.

Respectfully submitted,

APPROVED:

WILLIAM C. BLAIR  
Assistant Attorney General

J. E. TAYLOR  
Attorney General

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