

**OPINION
45-158**

May 14, 1945 (OPINION)

INTOXICATING LIQUOR

RE: Retailer - Not Controlled by Wholesaler

The provisions of House Bill 165, enacted by the 1945 legislative assembly, are somewhat confusing, and apparently conflicting. The ambiguous provisions of parts of this measure are difficult to reconcile. The intention of the legislature can only be ascertained after consideration and study of the bill in its entirety.

It is evident that the purpose of House Bill 165 was to divorce and divest any proprietary interest that a manufacturer or wholesaler of intoxicating liquor shall be permitted to start anyone in the business of selling liquor and beer after July 1, 1945 by furnishing financial aid, furniture and equipment or by furnishing assistance in any manner. The legislature recognized, however, that there may be retail liquor or beer dealers, who have been furnished financial aid, furniture, fixtures, equipment, and in some instances the premises in which same are located, by manufacturers and wholesalers. Hence, as to such dealers, it was the intention of the legislature that they should be given the right to lease the premises and the furniture and equipment therein. And it also appears that it was the intention of the legislature that such retail dealers should have the right to acquire by purchase such furniture, fixtures and equipment after July 1, 1945 on terms other than for cash only.

Section 2 of House Bill 165 provides that "No manufacturer or wholesalers shall either directly or indirectly own or control, or have any financial interest in, any retail business selling beer or alcohol and alcoholic beverages, but this restriction shall not be construed to deny such person the right to use or have his property rented for such purpose in any case where the manufacturer or wholesaler was a bona fide owner of the premises prior to the effective date hereof. No manufacturer or wholesaler shall directly or indirectly or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner thereof, give, lend, or advance any money, credit or other thing of value to any retailer or to any person for the benefit or relief of any retailer, nor furnish, give, lend, lease or sell any furniture, fixtures, fittings, or equipment to any retailer; nor shall any manufacturer or wholesaler, directly or indirectly, have any interest, in or pay for, any retail license, or advance, furnish, lend or give money for the payment of retail license fees or any expense incident to obtaining of such license; nor shall any manufacturer or wholesaler become bound in any manner, directly or indirectly, for the repayment of any loan made to, or the fulfillment of any financial obligation of, any retailer
....."

Section 2 thereupon enumerates six exceptions to the foregoing restrictions, among which is the following provision:

"That the manufacturer or wholesaler may lease or lend to the

owner of premises, as to any retailer now or hereafter occupying the premises, any furniture, fixtures, fittings and equipment actually located on said premises on the effective date hereof. Any such manufacturer or wholesaler who, within ten days after the effective date hereof, owns any furniture, fixtures, fittings or equipment in possession of any retailer on the effective date hereof may within ninety days after said effective date, sell the same to such a retailer only for cash on delivery and deliver a bill of sale to the same."

The foregoing provision of section 2 appears to be contradictory. The language used is involved and confusing. For, if furniture, fixtures and equipment are already located on the premises owned or leased by a retailer, there can be no actual delivery in case of sale thereof to him, except in a purely legalistic and technical sense. It is our opinion that the phrase "within ninety days," as used in subdivision 6 of the restrictions mentioned in section 2 means "after the expiration of ninety days."

The effective date of House Bill 165 is July 1, 1945, and it is the opinion of this office that after that date, no manufacturer or wholesaler of beer, alcohol and alcoholic beverages may have any interest, financial or otherwise, in the conduct of the business of a retailer. The only relationship which can legally exist between such manufacturer or wholesaler on the one hand and a retailer on the other is the relationship of landlord and tenant or of lessor and lessee. The manufacturer or wholesaler can not legally have any interest in the business of the retailer. In other words, such wholesaler or manufacturer is placed in exactly the same position as a person who merely owns and leases real estate and/or personal property.

Any such manufacturer or wholesaler who is the owner of any furniture, fixtures, fittings or equipment on the tenth day of July, 1945, may, within ninety days after July first, sell the same to the retailer who was in possession thereof on the first day of July, 1945, on such terms as may be mutually agreed to in so far as payment of the purchase price is concerned. But after the expiration of ninety days from the first day of July, 1945, such sale must be for cash only, and not partly for cash and the balance on time. And any manufacturer or wholesaler who acquires or becomes the owner of such furniture, fixtures, etc. after July tenth, may sell the same to a retailer, whether or not such retailer was in possession thereof on July first, for cash only. After July 1, 1945, any sale to a retailer who has not been in possession of such furniture, fixtures, etc. as of July first, must be for cash only.

NELS G. JOHNSON

Attorney General