

**OPINION**  
**45-19**

May 21, 1945            (OPINION)

ALCOHOLIC BEVERAGES

RE: License - Qualifications of Applicant

This will acknowledge the receipt of your letter under date of May 15, wherein you request the interpretation of this office of subdivision 2 of section 3 of house bill 109, enacted by the 1945 legislative assembly, which reads as follows:

"Applicant shall not have been convicted of a felony, or of keeping or maintaining a house of prostitution, or have been convicted within five (5) years of the date of his application of any violation of the laws of this state or the laws of the United States relating to beer, alcohol, or alcoholic beverages."

The question which you desire this office to answer is whether or not subdivision 2 of section 3 is merely prospective in its application or whether it is retroactive, as the language used therein clearly implies.

It is the duty of this office to interpret any act of the legislature in the light of the intention of that body. It appears clear to us that subdivision 2 of section 3 means exactly what it says and that it was the intention of the legislature to bar any applicant referred to therein from obtaining a license to sell beer or liquor at retail.

The provisions of subdivision 2 are harsh and may be unfair, especially insofar as it applies to retailers who now are engaged in the sale of liquor or beer and who have considerable investments in the business. But it is not the function of this office to depart from or change clear and unambiguous provisions of a measure duly enacted into law. For it does not appear to us that there is any room for construction or interpretation. The language of subdivision 2 is perfectly clear and unambiguous.

The constitutional objections raised by you would undoubtedly apply in the case of any ordinary business. The liquor traffic is not regarded as a useful occupation. And it is our opinion that the legislature may constitutionally grant the right to sell intoxicating liquors to a certain class or classes of persons and withhold it from others. See 30 Am.Jur. sec. 84, p. 301.

It has been held that "one of the main ideas underlying the license laws is to restrict the liquor traffic to persons of good moral character who may reasonably be expected to keep their business free from greater vices which have impelled restrictive legislation on the question. One of the clear indexes to personal fitness is the manner in which the applicant has conducted himself or his business in the past." 30 Am. Jur. sec. 111, p. 316.

It has further been held that "inasmuch as the right to sell

intoxicating liquors is neither an inalienable nor constitutional right and since the state may either absolutely forbid or may license the sale, it may impose such conditions upon the granting of licenses as it may see fit, or it may confer this power on a state board or on local licensing authorities." 137 U.S. 91, 34 L. Ed. 628.

And it has also been held that "liquor licenses are not contracts and create no vested rights, but are simply temporary permits which are subject to revocation by the power authorizing their issuance. The fact that saloon keepers are thereby deprived of their bar fixtures for the sale of intoxicating liquors does not deprive them of their property without the process of law, although the fixtures are useless for other purposes." 30 Am. Jr. 189 - Citation, People v. McBride (Ill.) 14 Ann. Cas. 994.

In 35 Corpus Juris, sec. 121, p. 541, it is said: "Unless otherwise provided by statute there is no single or absolute criterion, but the licensing authorities must judge whether the acts or conduct shown are sufficient in themselves, or as an index to character, to disqualify him. Specific disqualifications are, however, some times enumerated. Thus some statutes provide against the grant of a license to any person who has previously been convicted of a crime, particularly of the violation of liquor laws, who is in the habit of becoming intoxicated or who does not keep an orderly law abiding house."

Section 3 of house bill 109, however, does not vest in the attorney general any discretion as to choice of licensees. Under this measure he is a ministerial and law enforcement officer. The legislature has definitely and clearly prohibited the class of persons mentioned in subdivision 2 of section 3 of such bill from engaging in the retail sale of beer or liquor.

It is our opinion that permission, or license, to sell intoxicating liquor is a privilege which may be granted by the legislature upon such terms as it deems necessary to impose. And until the supreme court decides otherwise it will be the opinion of this office that no person who has been convicted of a felony, or of pandering or keeping or maintaining a house of prostitution, or has been convicted within five (5) years of the date of his application of any violation of the laws of this state, or of the laws of the United States relating to beer, alcohol, or alcoholic beverages, may be licensed by the attorney general as a retail beer or retail liquor dealer.

NELS G. JOHNSON

Attorney General