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SPRINGFIELD

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FILE NO. S-1026

LIQUORS:
Eligibility of Churches
and Schools for Retail
Liquor Licenses

Michael R. Berz
Chairman
Illinois Liquor Control Commission
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Berz:

This responds to your request for an opinion as to whether churches and schools may be issued retail liquor licenses and whether the Liquor Control Commission is obligated to issue such licenses.

Preliminarily, it should be noted that under section 11 of article VI of "AN ACT in relation to alcoholic liquors" [Liquor Control Act] (Ill. Rev. Stat. 1974 Supp., ch. 43, par. 130) public schools could not hold a liquor license except

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as provided therein. There is nothing in the Act, however, to prevent a church or a private school from holding a retail liquor license if they otherwise qualify. I am, therefore, of the opinion that churches and private schools, properly qualified, may hold liquor licenses, subject to the qualification below.

You have drawn my attention to section 8 of article VI of the Act (Ill. Rev. Stat. 1973, ch. 43, par. 127) which provides in part as follows:

"§ 8. No license shall be issued for the sale at retail of any alcoholic liquor within 100 feet of any church, school, * * * provided, that this prohibition shall not apply * * * to the renewal of a license for the sale at retail of alcoholic liquor on premises within 100 feet of any church where such church has been established within such 100 feet since the issuance of the original license. No alcoholic liquor, other than beer shall be sold for consumption on the premises within 1500 feet from any building used for regular class room or laboratory instruction on the main campus of any State university owned or maintained, in whole or in part, by the State of Illinois; provided, this prohibition shall not apply (1) to a place of business which sells beer but does not sell any other alcoholic liquor and was established and operated prior to the effective date of this amendatory Act, or (2) to premises owned or controlled by any State university and used as a faculty center or an airport."

Under this provision alcoholic beverages may not be sold within 100 feet of a church or school or other named institutions.

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There is some ambiguity as to whether this prohibition applies to church, school and other named institutional buildings. For the reasons discussed below I am of the opinion that the prohibition does apply to such buildings and that, therefore, while a church and school may hold a liquor license, they could not sell liquor within 100 feet of the property on which a church or school building is located.

The statute clearly provides that the retail sale of alcoholic liquor shall not be within "100 feet of any church, school * * * ". This provision of the Liquor Control Act was enacted for the purpose of protecting churches, schools and other named institutions. (See Smith v. Ballas, 335 Ill. App. 418.) This protection cannot be waived. Big Bear Markets v. Michigan Liquor Control Com'n., 77 N.W. 2d 135 (Mich. 1956).

In Sacks v. Legg, 219 Ill. App. 144, the Appellate Court discussed the meaning of the word "within". That case concerned the interpretation of an ordinance which prescribed that no junk yard should be maintained where two-thirds of the buildings within a radius of 300 feet were used exclusively for residence or retail store purposes. The lower court refused to count a building located on the extreme south side of the proposed site for a junk yard for the reason that it was a

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building on the proposed site. The Appellate Court said that the building should be counted and discussed the meaning of the term "within". It stated at page 148 as follows:

"* * * The word 'within,' as here employed, is clearly used as a preposition, and in the sense that the whole territory embraced in the limits of such 100 feet should be included. The third definition given by Webster is 'inside the limits of'; 'not going outside of'; 'not beyond or exceeding.' Cary-Lombard Lumber Co. v. Fullenwider, 150 Ill. 634. And it seems too clear for argument that the phrase in the ordinance referred to is to be read as including all buildings located at all points inside of the limits of 300 feet of the proposed site; and it was therefore error not to count the building [located on the proposed site].
* * * "

The same analysis applies to the use of the word "within" in the Liquor Control Act. A church or school or other protected institutional building is within the protected area.

Your second question is whether the State Commission is required to issue a retail license for an establishment located in a church or school or 100 feet thereof when a local liquor commission has issued one. Section 13 of article III of the Liquor Control Act (Ill. Rev. Stat. 1973, ch. 43, par. 109) provides that nothing in the Act should be construed to permit

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the State Commission to issue a retailer's license for any premise in any prohibited territory. Section 8 of article VI prohibits the issuance of a retail license for premises within 100 feet of the institutions named therein (with certain exceptions). This is prohibited territory. Therefore, I am of the opinion that the State Commission has no authority to issue a license for the sale at retail of any alcoholic liquor within 100 feet of any institution, including the institution itself, named in section 8 of article VI (except as provided therein) even though a license has been issued by a local commission. I am aware of Retail Liquor Dealers Ass'n. v. Fleck, 408 Ill. 219, however, in that case the court held only that the State Commission may not pass on the qualifications of the applicant. The qualifications of the applicant are not involved here.

Very truly yours,

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