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LIQUOR:
Age for Employment

Mr. Michael R. Berz
Chairman, Illinois Liquor
Control Commission
188 West Randolph Street
Chicago, Illinois 60601

Dear Mr. Berz:

Your recent letter requests my opinion as follows:

"As chairman of the Illinois Liquor Control Commission, I would appreciate your answers to the following questions:

1. Is it legal in Illinois for persons 18, 19 and 20 years of age to serve liquor in establishments licensed under the Illinois Liquor Control Act?
2. Is it legal for persons 18, 19 and 20 years old to work in establishments licensed under the Illinois Liquor Control Act (for example, grocery stores) if they do not serve liquor?

The commission receives these questions regularly, and I believe the public interest necessitates an official Attorney General's opinion on the questions in due course."

Section 1 of Article IV of the Liquor Control Act

(Ill. Rev. Stat. 1971, ch. 43, par. 110) provides:

"In every city, village or incorporated town, the city council or president and board of trustees, and in counties in respect of territory outside the limits of any such city, village or incorporated town the county board shall have the power by general ordinance or resolution to determine the number, kind and classification of licenses, for sale at retail of alcoholic liquor not inconsistent with this Act and the amount of the local licensee fees to be paid for the various kinds of licenses to be issued in their political subdivision, except those issued to the specific non-beverage users exempt from payment of license fees under Section 4 of Article V thereof which shall be issued without payment of any local license fees, and the manner of distribution of such fees after their collection; to prohibit any woman or minor, other than a licensee or the wife of a licensee, from drawing, pouring, or mixing any alcoholic liquor as an employee of any retail licensee; and to prohibit any minor from at any time attending any bar and from drawing, pouring or mixing any alcoholic liquor in any licensed retail premises; and to establish such further regulations and restrictions upon the issuance of and operations under local licenses not inconsistent with law as the public good and convenience may require; and to provide penalties for the violation of regulations and restrictions, including those made by county boards, relative

to operation under local licenses; provided, however, that in the exercise of any of the powers granted in this section, the issuance of such licenses shall not be prohibited except for reasons specifically enumerated in Sections 2, 8, 8a and 21 of Article VI of this Act."

This section grants broad power of liquor control and regulation to the boards of cities and villages, incorporated towns and counties, not only in determining the classification and granting of licenses but also in determining the persons who may be employed in the business of a licensee in the drawing, pouring and mixing of alcoholic liquors, and attendance at a bar. Additional authority can be exercised in a manner "not inconsistent with law as the public good and convenience may require". While few limitations have been read into this grant of local authority by the statute, the Illinois Supreme Court, before adoption of the 'Home Rule' provisions of the new Constitution, held that municipal bodies possess only such liquor control authority as is specifically given by statute. Heidenreich v. Ronske, 26 Ill. 2d 360, 187 N.E. 2d 261.

It has also been held by the courts in their review of this statute that the sale of intoxicating liquors when

not properly conducted is a business fraught with much danger and importance to the local community; and that, therefore, there exists a sound basis in public policy for vesting broad discretion in a local liquor control board or commissioner. Daley v. License Appeal Commission, 11 Ill. App. 2d 421, 138 N.E. 2d 73.

The Supreme Court of Illinois in Henson v. City of Chicago, 415 Ill. 564, 113 N.E. 2d 778, interpreted said section 1 of article IV insofar as it authorizes local authorities to prohibit the employment of females and minors in the establishments of liquor licensees. In that case the City of Chicago adopted an ordinance which prohibited the employment of all females "other than the licensee, or the mother, daughter, wife or sister of the licensee" in drawing, pouring or mixing any alcoholic liquor. It was contended by plaintiff that the prohibition was arbitrary, capricious and unreasonable, and insofar as it barred all females from occupation in liquor establishments, it violated provisions of the Illinois and United States Constitutions. In the Henson case the Supreme Court (p. 569-70) pointed out that the pertinent section of the Act

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relating to women and minors "constitutes the limits restricting the actions of the city . . ." and indicated that a local ordinance may, but need not, prohibit women and minors from serving alcoholic beverages.

As I read the Hanson decision, had the City Council of Chicago chosen to permit all females and minors to engage in the occupation of "drawing, pouring or mixing" alcoholic liquor, it would have been within its authority to do so. Section 1 of article IV has been viewed as merely permissive enabling legislation, not constituting a state statute prohibiting the employment of women or minors as bartenders". McGrinman v. Daley, (7th cir., 1969), 418 Fed. 2d 366.

Thus, while the local board is authorized "to prohibit any minor from at any time attending any bar and from drawing, pouring or mixing any alcoholic liquor in any licensed retail premises", until it does so, it is legal for minors to do so.

Your questions then are whether 18, 19 and 20 year olds are minors. When the Liquor Control Act was passed in 1934, the term "minor" was not only used in

section 1 of article IV but was also used in section 12 of article VI (Laws of 1933-34, First, Second and Third Special Sessions, p. 71) which provided as follows:

"No licensee shall sell, give or deliver alcoholic liquor to any minor or to any intoxicated person, or to any person known by him to be a habitual drunkard, spendthrift or insane, feeble-minded or distracted person."

However, the term "minor" itself was not defined in the Act.

"Minor" was then defined in "AN ACT in regard to Guardians and Wards", approved April 10, 1872 (Laws of 1871-72, p. 399),

(codified in The Probate Act, approved July 24, 1939,

Laws of 1939, p. 4) to be males under the age of 21 and

females under the age of 18. This was the understanding

of the legislature of the term "minor" when it passed the

Liquor Control Act.

Although the Liquor Control Act was amended on August 1, 1961 (Laws of 1961, p. 2479), to provide that no licensee nor any officer, etc. shall sell, give or deliver alcoholic liquor to any person under the age of 21, and again amended by Public Act 78-26, approved June 13, 1973, to reduce from age 21 to 19 the prohibition heretofore contained in the Liquor Control Act relating to the sale and

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possession of beer and wine, but not to other liquors, section 1 of article IV has remained unchanged, and "minor" has never been defined in the Act.

The definition of the term "minor", however, as contained in The Probate Act, was amended by Public Act 77-1229 (Laws of 1971, p. 2201), to provide that "persons of the age of 18 shall be considered of legal age for all purposes, except that of the Illinois Uniform Gifts to Minors Act, and until this age is attained they shall be considered as minors". (Ill. Rev. Stat. 1971, ch. 3, par. 131.) Thus, 18, 19 and 20 year old males are no longer considered minors and females of such age never were.

Furthermore, regardless of whether the legislature intended by the 1971 amendment to The Probate Act also to change the definition of "minor" as used in the Liquor Control Act, the definition as originally understood in the Liquor Act would be unconstitutional as a violation of both sections 2 and 18 of article I of the 1970 Constitution of Illinois. Any definition of "minor" which would distinguish on the basis of sex alone would be a violation of section 18 which provides that "equal

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protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts". (See People v. McCalvin, 55 Ill. 2d 161 and my Opinion of June 30, 1973, No. S-490.) The definition as originally understood would also violate section 2 which provides that "no person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws". There is no longer any rationale for a distinction between males and females as to the age at which they can no longer be prohibited from performing certain employment in a licensed liquor establishment. While the 1934 Liquor Control Act may have established a rational basis for such a distinction because the distinction was the same as that for legal consumption, such basis has been destroyed by changing the age for legal consumption. It is illogical to permit an 18 year old female to draw, pour, and mix and attend a bar, but not drink, and to permit a 19 year old male to drink beer and wine, but not to draw, pour, and mix and attend a bar.

I note that under section 13a of article VI of the Liquor Control Act (Ill. Rev. Stat. 1971, ch. 43, par. 134a) it is provided:

"Any person to whom the sale, gift or delivery of alcoholic liquor is prohibited because of age shall not purchase, or accept a gift of alcoholic liquor or have alcoholic liquor in his possession.

* * *

There may be some concern that a person in serving or handling alcoholic beverages as an employee of a licensed establishment may be "in possession" of them under this section and thus prohibited from serving, or otherwise handling alcoholic beverages.

There are no Illinois cases which interpret "possession" as used in this statute. Possession was first added to section 13a of article VI in 1955. There is no indication in the statute that it was meant to amend section 1 of article IV, or to otherwise prohibit the employment of minors by a licensed establishment. This is evidently the view taken by my predecessor in 1961 Op. Atty. Gen. No. 59, 162, in which he stated at p. 163:

"It is readily apparent that there is not now nor has there been any regulation by State law with reference to waitresses or minors working in premises licensed as retail liquor dealers except as the Child Labor Laws might apply (Ill. Rev. Stat. 1959, chapter 48, paragraphs 31.1 et seq.)
* * * "

The Oregon Supreme Court interpreted the meaning of "possession" in a similar statute in State v. Gordinear, (1961) 366 Pac. 2d 161. That statute used the phrase "purchase, acquire or have in his or her possession", which is similar to the Illinois statute which uses the phrase "purchase or accept a gift of alcoholic liquor or have alcoholic liquor in his possession". That court stated as follows:

"[2] 'Possession', as used in ORS 471.430, is preceded by the words 'purchase, acquire'. These words indicate a legislative intent that the minor must know that he is in the physical possession of intoxicating liquor. State v. Cox, 91 Or. 518, 179 P. 575. Nor can we attribute to the legislature the intent to make a criminal of a minor child who, though knowing there is intoxicating liquor in a package, carries the liquor from an automobile into the home of a neighbor at the neighbor's request.

In our opinion 'possession', as used in this statute, includes in addition to guilty knowledge the intent of the minor to possess full control over the liquor with the right to enjoy its consumption to the exclusion of others." (at p. 164.)

It is therefore my opinion that section 13a of article VI does not prevent a person prohibited from consuming alcoholic liquor from serving or handling alcoholic beverages as an employee of a licensed establishment.

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Since section 13a of article VI does not prevent a person who is prohibited from consuming alcoholic liquor from serving or handling alcoholic beverages as an employee of a licensed establishment, and since minors are persons under 18 years of age, it is my opinion that it is legal in Illinois for persons 18, 19 and 20 years of age to work in and to serve liquor in establishments licensed under the Illinois Liquor Control Act.

Very truly yours,

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