

**OPINION
45-156**

May 2, 1945 (OPINION)

INTOXICATING LIQUOR

RE: Bar Defined

After further study and consideration of Senate Bill No. 109, and particularly section 4 thereof, we have concluded to modify the opinion issued out of this office addressed to yourself under date of April 3, 1945. Section 4 of Senate Bill No. 109 is as follows:

No license authorized to sell beer or alcohol and alcoholic beverages shall operate or maintain a bar on or over which beer or alcohol and alcoholic beverages are sold, furnished or distributed in any room or rooms wherein food is served at tables for consumption on the premises, excepting that any licensee who operates or maintains such a bar may operate a restaurant as a part of his licensed premises if the dining room where food is served at tables is separated by a solid wall or walls from the room or rooms containing such bar, and access between such dining room and the bar room is had by not to exceed two connecting archways, or doorways, and each such archway or doorway shall not exceed four (4) feet in width. Where a restaurant is so operated by such a licensee, his license shall cover each room and the licensee may sell and serve beer or alcohol and alcoholic beverages, as the case may be, to patrons of the restaurant. No person under 21 years of age shall be permitted in any room wherein is operated or maintained a bar on or over which beer or alcohol and alcoholic beverages are sold, furnished or distributed."

A bar is generally defined as a bar or counter from which liquors and food are passed to customers, hence the portion of the room behind the counter where liquors are kept for sale and the counter on or over which liquor and refreshments are sold and dispensed. It is further held that the words "bar" and "bar room" have a more restrictive meaning than "saloon" and means a place from which intoxicating liquors are to be sold.

These definitions of a bar, however, do not take into consideration what is now known as "off sale" and "on sale" of alcoholic beverages. There is an important difference in the operation of an "off sale" bar and an "on sale" bar. On the "off sale" plan, the liquor is sold in original packages and cannot be consumed on the premises. It is sold in the same manner as any article in the original package, and the sale of it is no different than if a customer purchases a bottle of cough medicine in a drug store, puts it in his pocket and walks out.

Under the "on sale" plan, however, the situation is quite different. The customers will congregate at the bar, drink their liquor there, and engage in conversation which may sometimes become loud and hilarious. The general atmosphere about an "on sale" bar as ordinarily understood, is noisy and may become annoying and even

obnoxious to people who do not participate in those things and are served meals in the same room.

It was undoubtedly the intention of the Legislature that an "on sale" bar, as it is popularly understood, should be separated from a restaurant or dining room where meals are served to the public so that the customers in the restaurant or dining room may not be annoyed or embarrassed by the noisy and vocal demonstration of the customers at the bar.

That such was the intention of the Legislature becomes quite clear from the fact that section 4 of Senate Bill No. 109 provides specifically that a licensee who operates and maintains a bar may operate a restaurant as a part of his licensed premises if the dining room where food is served at tables is separated by a solid wall or walls from the room or rooms containing such bar, and access between such dining room and the bar room is had by not to exceed two connecting archways, or doorways, and each such archway or doorway shall not exceed four (4) feet in width.

It is the opinion of this office, therefore, that a dining room or restaurant where meals are served to the public must, under the provisions of Senate Bill No. 109, be separated from an "on sale" bar by a wall as provided for in section 4 thereof.

It is further the opinion of this office that it was not the intention of the Legislature to prohibit the sale and serving of confectioneries and ice cream in the same room where a bar is maintained. In other words, whether the sale of liquor is on the "off sale" or "on sale" plan, the license may also sell confectioneries and ice cream to his customers provided he otherwise complies with the law. In construing the general purpose of Senate Bill No. 109, therefore, we do not believe that confectioneries and ice cream come within the classification of food.

It is not the intention of this office to pursue a policy of arbitrary construction of the provisions of this statute. In interpreting the language of a statute which requires a radical change in existing conditions, we do not believe that resort should be had to technical niceties, but rather that such statute should be construed liberally and that a substantial compliance with the terms thereof is sufficient.

NELS G. JOHNSON

Attorney General