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PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 70-9 (R-56)

REQUESTED BY: CARL W. NEEDHAM, Chief
Criminal Investigation Division
Department of Public Safety

QUESTION: Do the liquor laws of this state permit the functioning of private clubs which would operate as after hours bottle clubs and would serve liquor that the members had purchased elsewhere and brought to the club themselves? This type of club has some or all of the following characteristics:

1. Membership fees, either daily, weekly, monthly or yearly.
2. The service of set-up, mixes, glasses and possibly the giving away of spirituous liquor.
3. Guests would be permitted if accompanied by a member or if a member is present in the building.
4. Although the clubs may ostensibly be private, they would be open to the public generally upon the payment of a fee.
5. Officers from the Department of Public Safety would not be admitted.

ANSWER.: No.

The question has been inferentially answered by the Legislature and by the appellate courts of this state. It has also been the subject of a prior opinion of this office, answering a question submitted by the Honorable Charles H. Oatman, a member of the 24th Legislature (Opinion No. 59-127).

This opinion confirms the previous opinion, and expands upon it to some degree. In order to properly present the answer, it is necessary to discuss a number of the more important decisions of our courts concerning liquor matters.

In Territory v. Connell, 2 Ariz. 339, 16 P. 209 (1888), the Supreme Court, after discussing the validity of the power of the state to make laws concerning intoxicating liquors, stated that if the Legislature has authorized the sale of such liquors, they must determine how the power should be exercised.

Subsequently, in Ghera v. State, 16 Ariz. 344, 146 P. 494 (1915), the Supreme Court, in affirming a conviction for violation of an amendment to the Constitution prohibiting the sale of intoxicating liquor, confirmed the Connell decision, by stating that absolute prohibition of the manufacture and sale of liquor is within the lawful exercise of the police power of the state.

In Oldaker v. Moore, 47 Ariz. 547, 57 P.2d 1225 (1936), the Supreme Court, in a licensing case, added to the expanding definition of the state's control of the liquor business. The court stated, at page 548:

"The legislature has complete control over the liquor business in this state. In its wisdom, it has concluded that regulation is the proper method of handling it."

In Stanton v. Superior Court, 55 Ariz. 514, 103 P.2d 952 (1940), the Supreme Court, after citing Crowley v. Christensen, 137 U.S. 86, 34 L.Ed. 620, 11 S.Ct. 13 (1890), stated, "The same rule is now universally accepted as extending to the sale or use of intoxicating liquors in any manner." The rule to which the court refers, as set forth in Crowley, is:

"The police power of the state is fully competent to regulate the [liquor] business, to mitigate its evils, or to suppress it entirely."

In Lane v. Ferguson, 62 Ariz. 184, 156 P.2d 236 (1945), the court stated:

". . . [T]he legislature, in creating the Department of Liquor Licenses and Control, intended to create and establish state-wide control over the traffic in intoxicating liquors. The need of its regulation and control is undisputed. . . . Running through the entire act is the central idea that the traffic in intoxicating liquors is a problem that is state-wide; and correspondingly that only state supervision and control can adequately cope with it. . . ."

This same philosophy was once again reiterated in Mayor & Common Council of City of Prescott v. Randall, 67 Ariz. 369, 196 P.2d 477 (1948).

In Mendelsohn v. Superior Court, 76 Ariz. 163, 261 P.2d 983 (1953), the Supreme Court, in addition to adhering to the previously discussed doctrine, introduced a new theme. In considering the fact that the liquor laws are designed to protect the health, peace, temperance and safety of all citizens by providing strict regulation and control of the manufacture, sale and distribution of alcoholic beverages, the court stated that there are four parties to be considered in all applications for liquor licenses. Those parties are: (1) the applicant, (2) the state, (3) the local political governing body, and (4) those citizens who will be peculiarly affected by granting the license because of their close ties to the neighborhood wherein the liquor business is operated. The court continued by saying the neighborhood had the same rights as the proposed licensee.

The first case to be considered following the modification of the statute was Hooper v. Duncan, 95 Ariz. 305, 389 P.2d 706 (1964). Once again the court reiterated the right and power of the state to control the business of dealing in spirituous liquors. That control runs from complete prohibition to lesser degrees of regulation and surveillance.

With these cases in mind, the statute can be examined. Although references will be made to specific sections, they will not be set forth. A.R.S. § 4-101.4 defines "club", and subsection (e) thereof describes a "social club". It is obvious from this definition that the Legislature intended to place certain restrictions upon the availability of licenses to social clubs, although there is no limit to the number of such licenses which can be issued (A.R.S. §§ 4-205.B and 4-206.D). The licensing procedure (A.R.S. § 4-201) requires that all applications must be submitted to either city, town or county governing body for their approval or disapproval. The regulatory provisions of a club license are enumerated in A.R.S. § 4-205. Certain unlawful acts are set forth in A.R.S. § 4-244, of which paragraphs 1, 2, 9 - 12, 14-16 and 19 are pertinent to this opinion.

It is a general rule of statutory construction, that effect should be given, if possible, to every paragraph and section of a legislative act and, if they seem in conflict, they should be harmonized, if possible. Mayor & Common Council of City of Prescott v. Randall, supra; Ariz. Eastern R. Co. v. Matthews, 20 Ariz. 282, 180 P. 159 (1919). The entire title must be examined to arrive at the legislative intent. Hill v. County of Gila, 56 Ariz. 317, 107 P.2d 377 (1940). The conclusion is that the Legislature intended to provide for a number of methods by which alcoholic beverages may be sold, dealt in, dispensed and consumed. Section B of A.R.S. § 4-209 enumerates 16 different types of licenses available to the public. This is the extent of the methods by which the public can partake in the distribution and consumption of intoxicating liquors.

The situation about which you have inquired would appear to be an attempt to circumvent the intent of the statute. It provides a method to dispense and consume spirituous liquor which the Legislature has not authorized or sanctioned. In its silence, the Legislature has effectively stated that it should not and cannot be permitted to exist.

The following is some indication of specifically how the proposed bottle club would be incongruous with the hereinabove cited cases and statutory references. Primarily, it would be a violation of the statute prohibiting the dealing in spirituous liquors without a license and without compliance with Title 4, A.R.S. (A.R.S. §§ 4-244.1 and 2). It would, in effect, create more stringent requirements for persons holding liquor licenses than for bottle clubs, in that the licensees would be forced to follow Title 4, A.R.S. If such bottle clubs were permitted, it would obviate the necessity for obtaining a license in many instances. It would remove from public scrutiny those people who wished to operate such bottle clubs, because they would not be required to present an application to the local governing body. It would be in complete opposition to that statute requiring licensees to stop selling, disposing of, delivering, giving or allowing the consumption of spirituous liquors between the hours of 1:00 A.M. and 6:00 A.M.

The Legislature has provided a method for such social clubs to be licensed. The fact that bottle clubs merely provide set-ups, glasses, ice and a place to store and consume spirituous liquor would not remove them from the category of an establishment dealing in spirituous liquors. It is not difficult to envision the problems that would exist in addition to those outlined above. That these clubs would primarily function after hours is indicative of the fact that they would be an open, outright and blatant attempt to evade the control, as established by the Legislature.

Respectfully submitted,


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