



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 28, 1951

Hon. Coke R. Stevenson, Jr.
Administrator
Texas Liquor Control Board
Austin, Texas

Opinion No. V-1259

Re: Is person owning interest in business holding beer distributor's license eligible for employment by Texas Liquor Control Board.

Dear Sir:

Your request for an opinion asks whether a person who owns an interest in a beer distributing business conducted under a license issued by the Texas Liquor Control Board is eligible for employment by the Board.

Article 666-5, V.P.C., in so far as pertinent to your inquiry, provides that:

"No person shall be eligible for appointment nor shall hold the office of member of the Board, nor be appointed by the Board, nor hold any office or position under the Board, who has any connection with any association, firm, person, or corporation engaged in or conducting any alcoholic liquor business of any kind or who holds stocks or bonds therein, or who has pecuniary interest therein, nor shall any such person receive any commission or profit whatsoever from or have any interest whatsoever in any purchase or sales of any alcoholic liquors. . . .

"The Board or Administrator shall appoint all necessary clerks, stenographers, inspectors, and chemists, and other employees to properly enforce the provisions of this Act.

"No person shall be eligible for any appointment who has any financial connection whatever with any person engaged in or conducting any liquor business of any kind, or who holds stock or bonds therein, or who has any pecuniary interest therein, nor shall any such person receive any commission or profit whatever from, or

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have any interest whatsoever in, the purchases or sales made by persons authorized by this Act to manufacture, purchase, sell, or otherwise deal in the liquor business."
(Emphasis supplied throughout opinion.)

Your question turns on whether a beer business is a liquor business within the meaning of Article 666-5. That question arises by reason of the definition of "liquor" contained in Article 666-3a, V.P.C., that:

"'Liquor' shall mean any alcoholic beverage containing alcohol in excess of four (4) per centum by weight, unless otherwise indicated. . . ."

"Any definition contained herein shall apply to the same word in any form."

The definition of "beer" contained in Article 667-1, V.P.C., is:

"The term 'beer' means a malt beverage containing one-half of 1% or more of alcohol by volume and not more than 4% of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer."

"Alcoholic Beverage" is defined in Article 666-3a to mean

". . . alcohol and any beverage containing more than one-half of one per cent ($\frac{1}{2}$ of 1%) of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted."

If these definitions control and apply to the word liquor, as used in Article 666-5, then a strictly beer business would not be a liquor business within the provisions of this Article and a person owning an interest in a beer business would not by reason of Article 666-5 be ineligible for employment by the Board.

We are of the opinion that the word "liquor," as used in the quoted portion of Article 666-5, is not limited to the technical definition as contained in Article 666-3a, but is used as generally descriptive of those businesses dealing in alcoholic beverages which

the Texas Liquor Control Act subjects to regulations by the Texas Liquor Control Board.

The eligibility provisions in Article 666-5 were contained in the first comprehensive regulatory act adopted in 1935. H. B. 77, Acts 44th Leg., 2nd C.S. 1935, ch. 467, p. 1795. While substantially the same technical definitions of "liquor" and "beer" were therein also contained, the word "liquor" was used at times in the technical sense of the definition and at other times in a general sense meaning beverages containing lesser amounts of alcohol. Subsequent amendments have substituted the broader term "alcoholic beverages" for the word "liquor" in many provisions of the Act, but there is no indication that the meaning of the word "liquor" in Article 666-5, where it remains, has been changed. The meaning is to be determined from the context in which it is used, and where the context indicates the broader significance the meaning, to use the language of the definition is, "otherwise indicated." Examination of the 1935 Act illustrates the original significance of the term "liquor business of any kind" as contained therein to include a beer business, which meaning we conclude is the same today.

The conclusion indicated is borne out in the caption of the 1935 Act. That Act regulated all kinds of alcoholic beverages including beer, yet the caption described it as "regulating the traffic in alcoholic liquors," as creating a "Liquor Control Board," as providing for local option elections as to the sale of "intoxicating liquors having various alcoholic contents," and as providing for permits to engage "in the various phases of the liquor traffic." Nowhere in the caption is "beer" mentioned, yet elaborate regulation of beer traffic is established in the Act. It was obviously considered by the Legislature as one of the "kinds" of "liquor" business. The phrase "liquor business of any kind" bears close resemblance to the phrases used in the caption to indicate regulation of the "various phases of the liquor traffic" and sale of "liquors having various alcoholic contents," which obviously included "beer".

Again, in the emergency clause, traffic in beer was certainly contemplated by the general statements of the need for early effectiveness of the Act. It refers to the adoption of the constitutional amendment legalizing the sale of "liquor" in wet areas and recites the fact that traffic in "liquor" was then unregulated. Both statements

applied in fact to beer sales and traffic.

The word "liquor" was used exclusively throughout Section 6 of Article I of the original Act, which enumerated the general duties and responsibilities of the Board, some of which applied to the beer business. Section 23 of Article I defining "wet" and "dry" areas, spoke of "liquor" only but obviously applied to areas where "beer" sales were permitted or prohibited.

The sections dealing with local option elections and particularly with ballots used the word "liquor" in the sense of an alcoholic beverage and left its application to beer to depend on the designated alcoholic content.

These illustrations suffice to evidence the fact that the word "liquor," especially when used in the provisions of more general application, usually carried the generic connotations of the phrase "alcoholic beverages" and was quite often qualified by a statement of the particular alcoholic content to which the particular provision applied.

Finally, and quite significantly, the original Act was scrupulously specific in prescribing absolute independence of the regulatory agency and the industry over which it had jurisdiction. Not only was the eligibility provision repeated in Section 5 of Article I but Section 21a of Article II of the original Act made the following specific provisions designed to guarantee that the Board and its employees would not participate in political elections.

"Sec. 21a. It shall be unlawful [sic] for any person paid a salary or per diem or receiving any compensation out of the appropriation made or taxes collected under the terms of this Act to engage in or take part in any political campaign. By engaging in a political campaign or taking part in a political campaign is meant and shall include distributing circulars, handbills, posting pictures, handing out cards, making speeches or soliciting support for or opposing the election of any candidate for any public office. Any such employee engaging in such inhibited and unlawful conduct shall be subject to removal from his position and restraint from reemployment in such department for a period of one (1) year by a judgment in the

district court of the county wherein such unlawful activity occurred, either in whole or in part. Any ten (10) or more qualified resident voters of such county shall have authority to institute a suit in a district court of such county praying for the removal of such employee from such department, citing such employee and any member of the Board, and, upon final hearing, the allegations of the petition being sustained, the judgment shall be to discharge the employee and to restrain the department from re-employing such employee for a period of one (1) year from the date of the judgment.

"In like manner, any member of the Board who shall violate this section or who shall solicit, ask or suggest to any employee, either directly or through any other person, that such employee violate such section, then and in that event such Board member may be removed by quo warranto proceedings in the district court upon the relation of any ten (10) qualified voters of the county in which such violation occurred. The writing of a letter into any county wherein such letter violates or suggests, asks or solicits a violation of this law shall constitute sufficient grounds for removal in any county through which such letter passed or into which such letter passed."

This section was obviously designed to assure impartial administration and activity by the regulatory body and its personnel. The whole scheme for setting up the Liquor Control Board was to create an independent agency whose actions would not be influenced by a financial interest in the industry over which it exercised jurisdiction, and who would be expressly prohibited from exerting political influence in furtherance of or opposition to the interests of such industry.

The principle promulgated in Article 666-5 is not novel to Texas administrative law. See Article 4681, V.C.S., declaring that no person who is directly or indirectly interested in any insurance company may be a member of the Board of Insurance Commissioners or a clerk in the Insurance Department.

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We are constrained to attribute to the Legislature a consistent policy in regard to such eligibility provisions, where such consistency finds support in the law. You are, therefore, advised that one who owns an interest in a licensed beer distributing business is ineligible for employment by the Texas Liquor Control Board.

SUMMARY

One who owns an interest in a licensed beer distributing business is ineligible for employment by the Texas Liquor Control Board. Art. 666-5, V.P.C.

APPROVED:

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Yours very truly

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