

**Intoxicating Liquors, Sale of to Minors. Minors, Sale of
Intoxicating Liquors to. Parents or Guardians, Consent of.**

The selling or giving of liquors to a minor is a violation of the provisions of the statute, whether such minor is acting as agent or principal.

October 16th, 1913.

Hon. M. L. Rickman,
Secretary, Bureau of Child and Animal Protection,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 14th instant, submitting the following question:

"Please inform me whether a saloon can legally sell intoxicating liquors to messenger boys who are minors when such messenger is acting as the agent of some other person, and the liquor so sold to the boy is to be delivered to such other person?"

It is also stated in your letter that the claim is made that such business may be lawfully transacted under the provisions of Sec. 1746 of the Revised Codes. This contention may be disposed of with the single statement that said Sec. 1746 prohibits the employment of "any child under the age of sixteen years," in the lines of business therein named, and has no relation whatsoever to the law prohibiting the sale of liquors to minors.

Sec. 541 of the Penal Code of 1895 prohibited the selling or giving of intoxicating liquors, but the clause was added "without the consent of his parent or guardian." This section was amended by Chap. 17 of the Laws of 1905, by striking out the clause "without the consent of his parent or guardian," so that the law as it now appears in Sec. 8380 of the Revised Codes of 1907 reads:

"Every person who sells or gives intoxicating liquors * * * to a minor * * * is guilty of a misdemeanor."

This section as it now reads makes no reference to "agents" or "agencies" or "consent," but is a plain prohibition against selling or giving intoxicating liquors to minors, and is so plain in its provisions that it would seem further comment is unnecessary.

The Supreme Court of Michigan in considering a similar question under a very similar statute, said:

"A statute which forbids the sale, giving or furnishing of liquor to a minor is violated, although the liquor delivered to the minor be intended for the use of an adult, the infant being only an agent in making the purchase."

People v. Gavett, 36 N. W. 234.

The Supreme Court of Massachusetts, under a similar statute, reached the conclusion that:

"The sale or delivery of intoxicating liquor to a minor is equally an offense, whether made for the use of the minor or the use of a third person."

Com. v. O'Leary, 8 N. E. 887.

The Supreme Court of North Carolina reached the same conclusion, wherein it said:

"The fact that the father of the minor authorized the sale is no defense under the North Carolina act forbidding the sale in any manner, or the giving away of intoxicating drinks or liquors to minors."

State v. Lourence, 2 S. E. 367.

The Texas statute prohibits the selling of liquors to minors "excepting upon written consent," etc. The supreme court of that state in considering a conviction said:

"Recurring to our statute, it is evident to my mind if the exception authorizing the sale to the minor upon the written consent stated be eliminated it would be a violation of law without reservation to knowingly sell intoxicating liquors to a minor in this state."

Yakel v. State, 17 S. W. 943.

In a subsequent case the Supreme Court of Texas sustained a judgment of conviction although the minor at the time had a written order from an adult, the court in effect holding that notwithstanding the written order the dealer knew that in fact the sale was made to the minor.

Horsky v. State, 36 S. W. 443.

Sec. 187 of the Indiana Laws of 1881 prohibits the sale or barter of liquors to minors. The supreme court of that state, under this statute has repeatedly held that agency is no defense, and that it is immaterial whether the minor is acting on his own initiative or is the agent of another—the law prohibits the sale to him, and that:

“Whether the sale is direct or indirect, it is still a sale.”

Fehn v. State, 3 Ind. App. 568.

Homes v. State, 88 Ind. 145.

These principles here announced are further discussed in White v. Manning (Tex.) 102 S. W. 1160; 17 Am. Eng. Enc. L. 338; 23 Cyc. 195.

From these authorities, and from the statute, it necessarily follows that the selling or giving of liquor to a minor is a violation of the provisions of the statute, whether such minor is acting as an agent or principal.

Yours very truly,

D. M. KELLY,

Attorney General.