



1961

Intoxicating Liquors - Licenses - Is a Liquor License Property or a Privilege

Jay Myster

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Myster, Jay (1961) "Intoxicating Liquors - Licenses - Is a Liquor License Property or a Privilege," *North Dakota Law Review*: Vol. 37 : No. 3 , Article 8.

Available at: <https://commons.und.edu/ndlr/vol37/iss3/8>

This Case Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.commons@library.und.edu.

and which is followed by the majority of jurisdictions appears to be the most reasonable.

ROBERT P. GUST

INTOXICATING LIQUORS — LICENSES — IS A LIQUOR LICENSE PROPERTY OR A PRIVILEGE? — Plaintiff, as executor of decedent's estate, requested the Pennsylvania Liquor Control Board to transfer the decedent's liquor license in accordance with his testamentary directions.¹ The Commonwealth included the value of this right to apply for a transfer of decedent's liquor license as part of decedent's personal estate in an appraisalment for inheritance tax purposes. Upon the Commonwealth's appeal from the Trial Court's decision, holding such value non-taxable, the Supreme Court of Pennsylvania, overruling a previous decision,² held, with one justice dissenting, that the value of the right to apply for a transfer of the license is a property right, subject to inclusion as an asset of the estate for inheritance tax purposes. *In re Estate of Feitz*, 167 A.2d 504 (Pa. 1961).

The general law is well settled that a liquor license is neither property nor a contract right;³ but only a purely personal privilege for a specific limited time.⁴ Although often valuable, it is not transferrable without permission of the granting board,⁵ nor does it go to the personal representative or become an asset of the holder's estate in case of death.⁶ However, it may have the qualities of property,⁷ or it may be placed in the category of property where the question concerns the rights of the licensee's creditors or personal representative, and then only when it has been expressly made transferrable by legislative enactment.⁸

1. Pa. Stat. Ann. tit. 47, § 4-468 (1951). "Except in cases of emergency . . . transfers of licenses may be made only at times fixed by the board. In the case of the death of a licensee, the board may transfer the license to the surviving spouse or personal representative or to a person designated by him."

2. *In re Ryan's Estate*, 375 Pa. 42, 99 A.2d 562 (1953). Here the value of the license and the value of the right to apply for a transfer thereof were not taxable.

3. *State v. Alabama Alcoholic Beverage Control Board*, 246 Ala. 198, 19 So. 2d 841 (1944); *Owens v. Rutherford*, 200 Ga. 143, 36 S.E.2d 309 (1945); *Walker v. City of Clinton*, 244 Ia. 1099, 59 N.W.2d 785 (1953).

4. *In re Bay Ridge Inn*, 94 F.2d 555 (2d Cir. 1938); *People v. Harrison*, 256 Ill. 102, 99 N.E. 903 (1912); *Fredrico v. Braaten*, 181 Md. 507, 30 A.2d 776 (1943).

5. *Wood v. School Dist. No. 32*, 80 Neb. 722, 115 N.W. 308 (1908); *United States Fidelity & Guarantee Co. v. Little*, 76 N.H. 427, 83 Atl. 513 (1912); *Rawlins v. Trevethan*, 139 N.J.L. 226, 50 A.2d 852 (1947); *Barth v. Brandy*, 165 Wis. 196, 161 N.W. 766 (1917).

6. *Kosco v. Hackmeister, Inc.*, 396 Pa. 288, 152 A.2d 673 (1959).

7. *Midwest Beverage Co. v. Gates*, 61 F.Supp. 688 (N.D. Ind. 1945). The use of the permit, once granted, has the elements of property irrespective of what the legislature may declare about the permit itself. *Kline v. State Beverage Department of Florida*, 77 So. 2d 872 (Fla. 1955); *Stone v. Farish*, 199 Miss. 186, 23 So. 2d 911 (1945).

8. *Duncan v. Truman*, 74 Ariz. 328, 248 P.2d 879 (1952); *State v. Superior Court of Marion County*, 233 Ind. 563, 122 N.E.2d 9 (1954).

Two types of legislative enactments are readily apparent. The first type, found in the majority of jurisdictions, is a restrictive statute holding that a liquor license is not transferable.⁹ In jurisdictions such as these it is generally held that the death of a licensee terminates the license. It therefore does not become an asset of the estate¹⁰ or give the personal representative of the licensee any right to conduct the business or to make sales under the license,¹¹ nor can he exercise the privilege of obtaining a renewal, which could have been invoked by the decedent had he lived.¹²

The second type of enactment, the statutes in a minority of states,¹³ are such that a liquor license is regarded as a valuable property right.¹⁴ Where so regarded, it is an asset of the estate of the licensee which passes to the trustee in bankruptcy,¹⁵ or, in case of the licensee's death, to his personal representative,¹⁶ and can be transferred only to persons meeting the requirements of the statute.¹⁷ This license, when assignable, is also property subject to levy, or sale upon execution.¹⁸ As property, it has been held too incorporeal to be the object of a personal property tax.¹⁹

Although there are no cases discussing transferability under North Dakota's statute,²⁰ it appears, in the light of *Smith v. City*

9. An example of such an enactment is: Neb. Rev. Stat. § 53-149 (1953). "A license shall be purely a personal privilege good for not to exceed one year after issuance . . . nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily . . . Such license shall not descend by the laws of testate or intestate devolution, but shall cease upon the death of the licensee."

10. *In re Harris*, 15 Alaska 250 (1954); see *Light v. Zeiter*, 124 Mont. 67, 219 P.2d 295 (1950); *In re Buck's Estate*, 185 Pa. 57, 39 Atl. 821 (1898).

11. *Harting v. Bay Circuit Judge*, 176 Mich. 289, 142 N.W. 585 (1913); *Wood v. School Dist. No. 32*, 80 Neb. 722, 115 N.W. 308 (1908).

12. *Harting v. Bay Circuit Judge*, 176 Mich. 289, 142 N.W. 585 (1913).

13. An example of such an enactment is: Cal. Code Ann. § 24071 (West 1953). "The license or licenses of one spouse may be transferred to the other . . . and the license or licenses of a decedent, minor, ward, incompetent person, bankrupt person, person for whose estate a receiver is appointed or assignor for benefit of creditors may be transferred by or to the surviving partner . . . of deceased licensee, the executor, administrator, or guardian of an estate of a licensee, the surviving spouse."

14. *Etchart v. Pyles*, 106 Cal. App. 2d 549, 235 P.2d 427 (1951); *House v. Cotton*, 52 So. 2d 340 (Fla. 1951); *Deggender v. Seattle Brewing & Malting Co.*, 41 Wash. 385, 83 Pac. 898 (1906).

15. *In re Quaker Room*, 90 F.Supp. 758 (S.D. Cal. 1950); *Fisher v. Cushman*, 103 Fed. 860 (1st Cir. 1900).

16. *In re Quaker Room*, *supra*; *Roehm v. Orange County*, 32 Cal. App. 2d 280, 196 P.2d 550 (1948); *Harting v. Bay Circuit Judge*, 176 Mich. 289, 142 N.W. 585 (1913).

17. *Baltimore Retail Liquor P. Stores Ass'n v. Kerngood*, 171 Md. 426, 189 Atl. 209 (1937).

18. *Rowe v. Colpoys*, 137 F.2d 249 (D.C. Cir. 1943); *In re Fuetl*, 247 Fed. 829 (D.C. Conn. 1917).

19. *Roehm v. Orange County*, 32 Cal. App. 2d 280, 196 P.2d 550 (1948); *Harding v. Board of Equalization*, 90 Neb. 232, 133 N.W. 191 (1911).

20. N.D. Cent. Code § 5-03-02 (1961). "The license fees shall be the same to each individual within each of the said political subdivisions respectively, and a license shall not be transferrable, except to the executors or administrators of a deceased license holder."

of *LaMoure*,²¹ that North Dakota would follow the majority in construing a liquor license as a personal privilege.

It is submitted that today, through legislative fiat, the tendency is to involve the nature of the right in confusion by designating a license a property right for one purpose and a privilege for another. As a result the courts are going to find that they will have to go farther in solving the problem, and until they do, the apparent inconsistencies and obvious confusion will continue to plague the minds of intelligent men.

JAY MYSTER

JURY — BIAS AND PREJUDICE — AS PROPER SUBJECT OF INQUIRY IN *Voir Dire* EXAMINATION — The defendant was convicted of dynamiting a public school building in the city of Little Rock. In the course of the *voir dire* examination, the trial court refused to allow the defense counsel to ask the veniremen, "Are you a segregationist or an integrationist?" On appeal the Supreme Court of Arkansas in affirming the conviction, *held*, two justices dissenting, that the trial judge did not abuse his discretion in disallowing the question, which had no bearing on the acceptability of a juror trying a man for dynamiting a building, and which would be more confusing than helpful in determining a juror's fitness. The dissent argued that because of the common knowledge that the school was dynamited to prevent integration, the question would be necessary in order for the defense to ascertain possible bias and intelligently exercise peremptory challenges. *Lauderdale v. State*, 343 S.W.2d 422 (Ark. 1961).

A form of *voir dire* examination to lay basis for challenge is considered necessary to secure an impartial jury.¹ Questions have been considered acceptable even when they could not possibly lead to grounds for challenge for cause, but were simply to enable counsel to more intelligently utilize his peremptory challenges.²

Bias is intimately related to the purpose of *voir dire*.³ Potential jurors may be examined as to their membership in political,⁴

21. 77 N.D. 658, 44 N.W.2d 789 (1950).

1. *Leach v. State*, 31 Ala. App. 390, 18 So. 2d 285 (1944); *Gurley v. State*, 164 Ark. 397, 262 S.W. 636 (1924); *People v. Lobb*, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

2. *Rose v. Magio*, 220 Ala. 120, 124 So. 296 (1929); *State v. Miller*, 60 Idaho 79, 88 P.2d 526 (1939); *People v. De Lordo*, 350 Ill. 148, 182 N.E. 726 (1932); *but see*, *McGee v. State*, 219 Md. 53, 146 A.2d 194 (1950).

3. *Durham v. State*, 182 Tenn. 577, 188 S.W.2d 555 (1945); *Murphy v. State*, 72 Okla. Crim. 1, 112 P.2d 438 (1941) (dictum).

4. *United States v. Kertess*, 139 F.2d 923 (2d Cir. 1944).