



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-055

June 23, 2014

Ian W. Vickery, Prosecuting Attorney
Thirteenth Judicial District
307 American Road, Suite 114
El Dorado, Arkansas 71730

Dear Mr. Vickery:

I am writing in response to your request for my opinion on a question I will paraphrase as follows:

Does A.C.A. § 3-3-205(a)(1), which declares it illegal to “give any intoxicating alcoholic liquor without having a valid license,” apply to every situation in which one person “give[s]” another an alcoholic beverage?

You report that the El Dorado Chief of Police “feels duty bound to enforce the statute strictly” – an approach you suggest would require arresting a priest for giving communion wine; a golfer for “‘giving’ a friend a beer after a round of golf”; and a wedding host “for providing guests with champagne for a toast.”

RESPONSE

In my opinion, the answer to this question is “no.”

The statutory subsection at issue in your question provides as follows:

Any person who shall sell, barter, exchange, or give any intoxicating alcoholic liquor without having a valid license as provided by this

act, in addition to losing his or her license, shall be guilty of a Class A misdemeanor.¹

In my opinion, this statute – which, charitably put, is far from a model of draftsmanship – should not be literally read as criminalizing “gifts” of the sort referenced in your request.² Rather, I believe it should be read as applying only to entities or individuals who are subject to licensure under “this act.”³ In this regard, the statute provides that a violation will result, *inter alia*, in one’s “losing his or her license.” This provision has prompted you to remark in your request: “Obviously one without a license will not be deterred by the threat of losing his or her license.” Although true, this remark misses the point – namely, that the statute’s proscription against giving away alcoholic beverages applies only to “persons” *required to hold* a “valid license” – i.e., “persons” engaged in a commercial enterprise involving the production, distribution or sale of alcoholic beverages.⁴ It is not the case, then, that the term “person” as used in the statute should be interpreted as extending to noncommercial transactions of the sort referenced in your request.

¹ A.C.A. § 3-3-205(a)(1) (Repl. 2008).

² It is well established that, in determining legislative intent in order to construe an act, the reason and spirit of the act should take precedence over the letter of the act, where adherence to the letter of the act would result in an absurdity or would defeat the plain purpose of the law. *Williams v. City of Pine Bluff*, 284 Ark. 551, 683 S.W.2d 923 (1985). It is clearly absurd, not to mention unconstitutional, to interpret this law as barring, for instance, a priest from administering communion wine. Indeed, A.C.A. § 3-3-202(a)(1) (Supp. 2013) expressly authorizes “the use of wine in any religious ceremony or rite in any established church or religion.”

³ As reflected in the Reporter’s Note to the statute, the term “this act” likely means the Arkansas Alcoholic Control Act (the “Act”), Act 1935, No. 108, which is codified in various recited provisions of the Code. The Act imposes a permit requirement upon “persons” engaged in the commercial production and sale of alcoholic beverages, thereby ensuring that excise tax be duly paid on alcoholic beverages dispensed in Arkansas. See *McHenry v. State*, 219 Ark. 401, 402-03, 242 S.W.2d 707 (1951) (discussing the legislature’s intention “to prohibit the possession of intoxicating liquors without the Arkansas tax having been paid”). The Act defines the term “person” as “includ[ing] any and all corporations, partnerships, associations or individuals.” Acts 1935, art. I, § 1, codified at A.C.A. § 3-1-102(a)(5) (Repl. 2008).

⁴ In a logically separate proscription, the Act makes it a crime to “give away . . . intoxicating liquor to a minor. . . .” Acts 1935, art. VI, § 1(a), codified at A.C.A. § 3-3-202(a)(1). Needless to say, if the statute at issue in your request were intended to bar all gifts of alcoholic beverages under all circumstances, the limited bar recited in A.C.A. § 3-3-202(a)(1) would be redundant and unnecessary. It is an established rule of construction that language in a statute will not be given a construction that renders it mere surplusage. See e.g., *Stephens v. Arkansas School for the Blind*, 341 Ark. 939, 20 S.W.3d 397 (2000); *Central & Southern Companies, Inc. v. Weiss*, 339 Ark. 76, 3 S.W.3d 294 (1999); and *Ford v. Keith*, 338 Ark. 487, 996 S.W.2d 20 (1999).

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Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,



DUSTIN McDANIEL
Attorney General

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