

LIQUOR) A person paying only sales taxes
TAXPAYERS) and no other taxes is not eligible
for a liquor license.

May 26, 1939



Hon. Walker Pierce
Supervisor of Liquor Control
Jefferson City, Missouri

Dear Sir:

We have received your letter of May
18th, 1939, which reads as follows:

"Will you please advise me what
constitutes a taxpayer as the word
is used in Section 27 of the Liquor
Control Act.

"Will you advise me particularly
as to whether or not a person who pays
sales tax comes within the meaning of
the word as used in the above section."

The pertinent part of Section 27 of the
Liquor Control Act, Laws of Missouri, 1937,
page 533, reads as follows:

"No person shall be granted a license
hereunder unless such person is of
good moral character and a qualified
legal voter and a taxpaying citizen
of the county, town, city or village,
* * * * *

Hon. Walker Pierce

May 26, 1939

Page Two

A person therefore must be a "taxpaying citizen of the county, town, city or village" in which he seeks a liquor license in order to be eligible. The question then is whether a person who pays only a sales tax and who does not pay taxes to the county, town, city or village can qualify.

We do not find that the Missouri courts have ever passed on this question or one similar. However, other courts have been called upon to construe similar statutes. In the case of Hicks v. Krigbaum, 108 Pac. 482, the Supreme Court of Arizona had before it for construction the phrase "taxpayers of the district". In holding that under the terms of this statute that it was the legislative intent that only those taxpayers who paid taxes upon property within the particular district were intended, the court said: (l.c. 485)

"For the reasons already stated, the expression 'taxpayers of the district' in paragraph 2182 is not ambiguous and uncertain in that it does not appear whether it includes only residents of the district or whether it includes nonresidents who are taxpayers of the district. There remains the suggestion that, even so interpreted, it is ambiguous in that it may mean a taxpayer residing in the district who pays taxes upon property within the district, or one who pays upon property without the district. We are of the opinion, in view of the provisions of paragraph 2186,

Page Three

providing that the money for the redemption of said bonds and the payment of interest thereon shall be raised by taxation upon the taxable property in said district, that both the legislative intent and a reasonable construction require us to read the phrase to mean those who pay taxes upon property within the school district."

In the case of *City of Pocatello v. Murray*, 130 Pac. 383, the Supreme Court of Idaho had before it a statute which provided that certain commissioners in order to be eligible had to be "taxpayers of such town or city". The principal point at issue was whether one of the commissioners owned and paid taxes or was liable for the payment of taxes on property located within the city. The court found that the commissioner did in fact own property within the city and was therefore eligible. The court held, however, that the term "taxpayer of such town or city" means one who owns property within the municipality and who pays a tax, or is subject to or liable for the payment of a tax on such property. The court then said: (l.c. 387).

"From these facts it necessarily follows that each of said parties was a 'taxpayer' within the meaning of the statute in controversy in this case. 'A taxpayer' is one who owns property within the municipality, and who pays a tax or is subject to and liable for a tax."

Hon. Walker Pierce

May 26, 1939

Page Four

It follows then that the term "taxpaying citizen of the county, town, city or village" means that each liquor licensee must own property within the county, town, city or village in which he seeks a license to do business and he must be a taxpayer to such county, city, town or village.

There is no statute which authorizes a county, town, city or village to levy a sales tax. The sales tax now in force provides that such tax shall be paid to the state auditor.

Section 8, of the Sales Tax Act, Laws of Missouri, 1937, page 559, provides that the revenues derived from the sales tax shall be deposited to the credit of the ordinary revenue fund. This section reads as follows:

"All revenue collected or received by the State Auditor from the taxes imposed by this Act shall be deposited in the State Treasury weekly to the credit of the ordinary revenue fund."

Section 31, of the Sales Tax Act, Laws of Missouri, 1937, page 565 reads in part as follows:

"Any tax due and unpaid under the provisions of this Act shall constitute a debt due the State and in any case of failure to pay the tax, or any portion thereof, or any penalty or interest provided for in this Act, when due, the Auditor in the name of the State may recover the amount of such tax, penalty and interest by an action at law or other appropriate judicial proceedings." * * * *

Hon. Walker Pierce

Page Five

May 26, 1939

Section 31 states that the sales tax is a "debt to the state". Therefore it cannot be a debt to the county, town, city or village or a tax due and owing to it.

In your letter you also asked us to advise you "what constitutes a taxpayer as the word is used in section 27 of the Liquor Control Act." In this connection we are enclosing a copy of an opinion rendered by this office to the Hon. Charles D. Brandon, Prosecuting Attorney of Daviess County, Missouri, dated May 5th, 1938, in which this question in connection with Section 27 is treated generally.

CONCLUSION

Section 27 of the Liquor Control Act provides that no person shall be granted a liquor license unless such person is a "taxpaying citizen of the county, town, city or village." This means that each person seeking a liquor license must have paid a tax, or at least be liable for the payment of a tax to the county, town, city or village. Since the Missouri Sales Tax is a tax payable to the state and to the state alone, and not to any county, town, city or village, it follows that a person who pays only sales taxes and pays no taxes whatsoever to the county, town, city or village in which he seeks a liquor license is not eligible under the law for a license to engage in the liquor business in the State of Missouri.

APPROVED:

Respectfully submitted

W. J. BURKE
(Acting) Attorney General

J. F. ALLEBACH
Assistant Attorney General

JFA:RW