

LIQUOR CONTROL ACT: Collection of county liquor license fees is the duty of the County Collector.

8.25  
August 24, 1934.



Hon. Peter H. Huck,  
Prosecuting Attorney,  
Ste. Genevieve County,  
Ste. Genevieve, Missouri.

Dear Mr. Huck:

This department is in receipt of your request for an opinion as to the following state of facts:

"Ste. Genevieve County may license persons, etc. to sell intoxicating liquors by the drink on the premises where sold. We have a number of applicants, the question presents itself - under the new liquor law, who is to collect the liquor license fee for the county? We will appreciate your opinion on that question as soon as possible.

Formerly, the County Collector collected such license fees for the county; but by the underlined part of the inclosed 'County Liquor License' form, it appears that the County Clerk is supposed to collect such license fee due to the county. We find nothing in the new liquor law on the proposed question."

Section 24 of the Liquor Control Act of the State of Missouri provides:

"The County Court in each county is hereby authorized to make a charge for licenses issued to retail dealers in all intoxicating liquor, the charge in each instance to be determined by the County Court, by order of record, but said charge shall in no event exceed the amount provided for in Section 22 of this act, for state purposes."

It will be noticed that there is nothing in this section relating to the question here under discussion. It merely provides that the County Court is authorized to make a charge for licenses. As to the proper official to make the collection for the licenses, that is evidently left to the county management. A sample of the county liquor license of Ste. Genevieve County submitted to us contemplates that the fee for said license be paid to the County Clerk of said county. In our opinion, this is erroneous.

Under our system of county government, the county collector is the official who collects or receives taxes, duties or other public revenues. As was said by the court in the case of *Hubbell v. Bernalillo County* (Sup. Ct. N.Mex.), 86 P. 430, in defining the office of county collector:

"A tax collector is one whose duties it is to enforce the collection of taxes, the agent of the county to collect its dues. The treasurer, on the other hand, is the custodian of the funds of the county after they have been collected."

Occupation or license taxes are generally to be received or collected by the officers entrusted with the collection of other taxes, unless the license statute designates a special collector or officer to perform that duty. 37 C.J. 251. Where the tax is for county revenue and the statute is silent as to who shall receive it, the county tax collector is the proper person to receive it. *Ventura County v. Clay*, 112 Calif. 65, 44 P. 488.

A glance at the statutes of the State of Missouri will show that it was the intention of the Legislature in creating the office of county collector that the county collector was to receive, among other taxes, all license fees. Section 9927, R.S. Mo. 1929 provides in part as follows:

"Every county collector and ex officio county collector, except in the City of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same, less his commissions, into the state and county treasuries, respectively."

Section 9929, R.S. Mo. 1929 provides in part as follows:

"Every county collector shall, on or before the fifteenth day of each month, pay to the state treasurer all state taxes and licenses received by him prior to the first day of the month, as provided in section 9927 \*\*\*\*"

Section 9935, Laws of Mo. 1933, page 454 provides for the compensation of the county collector in the different counties of the state. This section is in part as follows:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:

I. In each county in this state wherein the whole state, county, bridge, road school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year amount to five thousand dollars or less, a commission of ten per cent on the amount collected. \*\*\*\*"

The language of the above statutes show clearly that it is the duty of the county collector to receive and collect all license taxes. The present Liquor Control Act is silent as to what official shall collect the license tax provided for, and in the absence of any legislative direction, it would appear that the county collector is the proper official to make the collection.

A practical example of the collection of license fees may be had by reference to the method of collection of merchants' licenses. True, the Legislature has specifically provided that the county collector shall collect these license fees; however, the procedure set out by the Legislature is indicative of the intention of the Legislature with respect to the collection of all licenses. Section 10085, R.S. Mo. 1929 provides:

"Such clerk shall deliver to the collector of his county all licenses so issued, and charge him therewith in a book to be kept for that purpose."

Section 10086, R.S. Mo. 1929 provides:

"The collector shall, at the time of delivering such license, collect the sum of fifty cents, the fee herein allowed to the clerk for issuing the same, and twenty-five cents each for the bond and statement to be retained by the collector as his fee for furnishing the same."

CONCLUSION

In view of the foregoing, it is the opinion of this department that, in the absence of any specific direction on the part of the Legislature, the collection of the county liquor license fees is properly the duty of the county collector, and that the collection of said license fees by any other county official is not according to law.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General

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