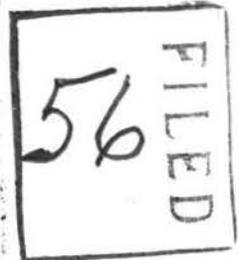


LIQUOR CONTROL ACT: City of fourth class has authority to pass an ordinance prohibiting the possession of intoxicating liquor upon which state and federal tax has not been paid, provided same does not conflict with Sec. 8 of the Act.

May 7, 1934

F I L E D

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Hon. Howard R. Maness
Prosecuting Attorney
Doniphan, Missouri

Dear Sir:

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

"It happens that I am prosecuting attorney of Ripley County and also city attorney of Doniphan, and I find that I can get better satisfaction in the city court for misdemeanor cases than in justice court. We have a city ordinance covering all liquor violations. I wish to ask your opinion upon the following proposition:

Does a city of the 4th class have authority to pass an ordinance prohibiting the mere possession of intoxicating liquor which has not had the state or federal tax paid on it. If so, where does it derive this authority?"

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A city of the fourth class has authority to pass an ordinance prohibiting the possession of intoxicating liquor upon which the State and Federal tax has not been paid.

Section 25 of the Liquor Control Act of Missouri provides:

"The Board of Aldermen, City Council or other proper authorities of incorporated cities may charge for licenses issued to manufacturers, distillers, brewers,

wholesalers, and retailers of all intoxicating liquor, within their limits, fix the amount to be charged for such license, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquor within their limits, not inconsistent with the provisions of this act, and provide for penalties for the violation thereof."

It will be noticed by a reading of this section that the cities are given the power to make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits.

Section 8 of the Liquor Control Act provides:

"No person shall possess intoxicating liquor within the State of Missouri unless the same has been acquired from some person holding a duly authorized license to sell the same under this act, or unless the said intoxicating liquor is had or kept with the written or printed permission of the Supervisor of Liquor Control, and the package in which intoxicating liquor is contained and from which it is taken for consumption has, while containing such intoxicating liquor, been labeled and sealed with the official seal prescribed under this act and the regulations made hereunder; provided further, that nothing in this act shall be so construed as to prevent the natural fermentation of fruit juices in the home for the exclusive use of the occupants of the home and their guests."

By this section it is unlawful for any person to have in his or her possession intoxicating liquor upon which the state tax has not been paid, with the exception that the natural fermentation of fruit juices in the home for the exclusive use of the occupants of the home and their guests is allowed.

Since a city does not have the power to make an ordinance inconsistent with the provisions of the Liquor Control Act, it is the opinion of this department that if the ordinance does not

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conflict with Section 8 of the Act, the city may, by reason of Section 25, make and enforce an ordinance prohibiting the possession of intoxicating liquor upon which the State and Federal tax has not been paid.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

Roy McKittrick
Attorney General