

LIQUOR CONTROL ACT - Board of trustees of an incorporated village may charge for licenses issued to manufacturers, distillers, brewers, wholesalers and retailers of intoxicating liquor.

June 28th, 1934.

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Honorable J. Ed Old, Chairman
Board of Trustees
Koshkonong, Missouri

Dear Sir:

This department is in receipt of your letter of June 8th, 1934 requesting an opinion as to the following state of facts:

"Some discussion has arisen here as to whether or not our Village Board of Trustees have the power and right to assess license fees for the sale of Liquor in our Village.

"We, the Village Board of Trustees would like to have an opinion from your office, and if we are allowed to assess this license fee just how much we may be able to assess.

"The Village of Koshkonong has a population of approximately 350."

I.

BOARD OF TRUSTEES OF AN INCORPORATED VILLAGE MAY
CHARGE FOR LICENSES ISSUED TO MANUFACTURERS, DISTILLERS,
BREWERS, WHOLESALERS AND RETAILERS OF INTOXICATING LIQUOR.

The Liquor Control Act of the State of Missouri provides in Section 25 as follows:

"SECTION 25. 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 that this section refers only to cities and makes no mention of towns incorporated by virtue of Chapter 38 of the Revised Statutes of Missouri, 1929. A literal interpretation of this section therefore could not include incorporated towns within its provisions. However, the spirit of the law and the intent of the Legislature would seem to indicate that the word "city" should include incorporated towns. This construction is made more apparent when we consider the nature of the law concerning which the Supreme Court of Missouri stated, in the case of State ex rel. Troll v. Hudson, 78 Mo. 302; l.c. 304,

"Such laws are regarded 'as police regulations, established by the legislature for the prevention of intemperance, pauperism and crime, and for the abatement of nuisances, ' and are not regarded as an exercise of the taxing power. 'Pursuits that are pernicious or detrimental to public morals may be prohibited altogether, or licensed for a compensation to the public.' "

In addition, we have the construction of the Kansas City Court of Appeals in the case of State ex rel. Rice v. Simmons, 35 Mo. App. 374, l.c. 380, wherein it was held that the word "town" included the word city. The language of the court on this point is illuminating.

"The contention in that case was that the word, 'towns,' as used in the constitution, did not embrace cities. The court said: 'But this argument is founded on the false basis of looking only at the letter of the law, and turning away from its spirit. It is true that if the letter of the law is absolutely unambiguous and definite and were susceptible of but a single meaning, the clause would have to be read in such sense, no matter to what futility it might lead. But such is not the case; the word 'town', has no such fixed signification as this, for though in its narrower sense it denotes something other than a city, in its broader scope it comprehends such a municipality. Mr. Tomlyn, in his law dictionary, under the title, 'Town,' says: 'Under the name of a town or village, boroughs, and, it is said cities are contained, for every borough or city is a town.' Lord Coke, in 1 Inst., 116, showing the capaciousness of the term, has this language: 'And is appeareth by Littleton, that a town is a genus, and a borough is the species.' Bouvier's definition of the word 'city' is, 'a town incorporated by that name.' These authorities suffice to show that the term in question is sufficiently classic to take in, when put to some of its uses, the institution denoted by the term 'city.'

Nor is the force of this consideration countervailed by the fact that some of the local governments in this state are incorporated under the designation of towns, and that others by the same means, are denominated cities. Pell v. Newark, Ib. 550; Anderson v. City of Brenton, 42 N. J. L. 487; State v. Goldstucker, 40 Wis. 124."

In Section 13a of the Liquor Control Act, the following provision is made:

"Provided further, that for the purpose of this act, the term 'city' shall be construed to mean any municipal corporation having a population of five hundred (500) inhabitants or more."

The wording of this law in 13-a would seem to foreclose the application of Section 25 to any city or incorporated village having less than five hundred (500) inhabitants. However, Section 13-a has to do with the right of the municipal corporations having less than twenty thousand (20,000) inhabitants to vote on the question of whether or not the sale of intoxicating liquor by the drink shall be allowed within the confines of said city. The provision heretofore referred to is a part of Section 13-a and a logical construction of the intent of the Legislature in enacting this provision is that they intended that to apply only to Section 13-a, the intent being that intoxicating liquor could not be sold by the drink under any circumstances in a municipal corporation having less than five hundred (500) inhabitants.

We conclude, therefore, that this provision of Section 13-a is not applicable to Section 25 of the Liquor Control Act of Missouri. While we believe these statutory constructions to be sound as tending to carry out the spirit of the law and the intention of the Legislature,

nevertheless it is not necessary in the instant case to rely wholly upon our construction of the Liquor Control Act. Section 7091 R. S. Mo. 1929 provides for the incorporation of towns and villages. Section 7097 R. S. Mo. 1929 provides in part as follows:

"Such board of trustees shall have power to pass by-laws and ordinances to prevent and remove nuisances; * to license, tax and regulate merchants, peddlers and auctioneers, and to regulate and prohibit the sale or giving away of intoxicating liquors under merchants' licenses in such towns: * "

Volume 37 of Corpus Juris, p. 178 states the general law to be:

"Unless some other provision of law forbids the exercise of the power to license, the power of a municipal corporation to license an occupation or privilege and impose a license fee or tax thereon is generally implied from power to regulate such occupation or privilege; or from power to control or suppress, to suppress and restrain, to license, regulate, and tax, or to prohibit, such occupation or privilege."

In the case of City of Troy v. Harris, 102 Mo. App. 51, l.c. 59, the court said:

"A license with or without a substantial charge for it (that is, one intended either for regulation or for revenue) may be exacted by municipalities as a prerequisite to the pursuit of a business in

its borders when the statutes so prescribe."

In the very early case of City of St. Louis v. Smith, 2 Mo. 113, the court said:

"But as to the tippling house, by law it may exist. The County Court may grant it a license, (94) and I cannot see how the corporation could well prohibit their existence if the County Court should license them. Then as to the tippling houses licensed by the County Court, the corporation may restrain, and where not authorized by the County Court, may suppress and prohibit altogether. (a)

"The question then arises, what is meant by restrain? I understand that any impediment thrown in the way of an unlimited exercise of a power, is a restraint; the restraint may be so great that it amounts almost or entirely to an exclusion to the exercise of the power. Yet it may be less, so much so that the restraint is scarcely perceptible. To require a license on the payment of fifty dollars, or to pay a fine of one hundred for neglect of this license, is a restraint. It may be a sufficient one, and if not, the corporation may provide other restraints."

CONCLUSION.

In view of the foregoing, it is the opinion of this department that by reason of the provisions of the Liquor

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Control Act of Missouri and Section 7097 R. S. Mo. 1929, the Board of Trustees of an incorporated town or village has the power to pass by-laws and ordinances to regulate and prohibit the sale or giving away of intoxicating liquors, and that the power to license such occupation is a necessary incident to the power to regulate and prohibit.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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