

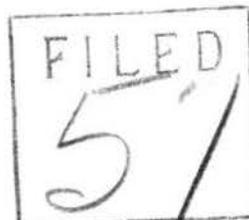
INTOXICATING LIQUORS:

Licensees, under the provisions of the Liquor Control Act, may be prosecuted for failure to pay into the county treasury the fee as provided under Section 25 of the Act.

August 28, 1935.

8-28

Hon. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"There are about 26 places in Morgan County, Mo. that sell beer. Only about 10 of the places have bought county beer licenses.

"Several of the lawyers around here have raised the question as to whether the county can prosecute any beer seller for not having a county license. The argument has been made that since the county takes a bond for the license like a merchants license, the county is relegated to a suit on the bond, and not entitled to a criminal prosecution.

"The argument has been made that under the Liquor Control Act, sec. 25, that it is not mandatory on the county to put a license tax on beer sellers. Therefore, the matter being optional, then an order of the court is for revenue only, and with a bond for collection. The argument is made that the county court is not a legislative body, and not authorized under the constitution and the laws to pass measures that provide for a criminal punishment. Therefore there is no criminal consequence if beer seller

does not buy any beer license in the county.

"Therefore, can a beer seller without a beer license sold by the county, be prosecuted and punished as a criminal for not having bought a county beer license?"

We direct your attention to Section 25 of the Liquor Control Act relating to the amount of fees that shall be paid into the county treasury by a holder of a permit under the act. It reads in part as follows:

"In addition to the permit fees and license fees and inspection fees by this act required to be paid into the state treasury, every holder of a permit or license authorized by this act shall pay into the county treasury of the county wherein the premises described and covered by such permit or license are located ****, a fee in such sum (not in excess of the amount by this act required to be paid into the state treasury for such state permit or license) as the county court, ****, shall by order of record determine, ****."

From a careful reading of the above section, it is evident that, if a person holds a permit under the Act, such person shall pay into the county treasury of the county, wherein the premises are located, a fee in such sum (not in excess of the amount required to be paid to the State) as the county court may by order of record determine. This section of the statutes makes it obligatory upon the licensee to make the payment into the county treasury.

It is noted from your inquiry that the only recourse the county may have is limited to recovery on bond given by the licensee. There is no provision under the Act that empowers the county court to require of a licensee to give a bond to the county, as the bond mentioned under the provisions of the Liquor Control Act is only given to the State and approved by the Supervisor of Liquor Control.

The only power the county has, under Section 25 *supra*, is to determine by order of record the amount of the fees to be paid into the county treasury of the county wherein the premises described and covered by such permit are located.

Your attention is directed to the case of Ray County, to the use of the Common School Fund, v. Bentley, et al., 49 Mo. loc. cit. 242, wherein the Supreme Court, in speaking of the powers of the county court, said:

***** The county court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. (Reardon v. St. Louis County, 36 Mo. 555.)

"The principle is well settled that a corporation can exercise only such powers and employ such agencies as its charter may permit. But counties have not the powers of corporations in general. They are merely quasi corporations, political divisions of the State, and they act in subordination to and as auxiliary to the State government. (Hann. & St. Jo. R.R. Co. v. Marion County, 36 Mo. 303; State v. St. Louis County Court, 34 Mo. 546; Barton County v. Walser, 47 Mo. 189.)
*****"

Since it is the duty of every person holding a permit under the Act to pay into the county treasury a fee in such sum, not exceeding the State fee, any failure to pay said fee would subject one to prosecution.

We direct your attention to Section 43 of the Liquor

Control Act which reads as follows:

"Any person violating any of the provisions of this Act, except where some penalty is otherwise provided, shall upon conviction thereof be adjudged guilty of a misdemeanor and punished by a fine of not less than Fifty (\$50.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and jail sentence."

Your attention is further directed to Section 2-a. relating to the enforcing of the provisions of the Liquor Control Act. The pertinent part of said section reads as follows:

"For the purpose of enforcing the provisions of this act and acts amendatory thereto, the prosecuting attorneys of the respective counties **** shall investigate and prosecute all violations of any provision of this act; **** Whenever any tax, fee or other charge, as authorized by this act, shall be due, suit may be instituted in any court of competent jurisdiction by the Prosecuting Attorney of the County, ****."

In light of the foregoing, it is our opinion that, should a person fail to pay into the county treasury the fee as the county court may by order of record determine, such person may be prosecuted for failure to comply with the provisions of the Act.

Yours very truly,

APPROVED:

RUSSELL C. STONE
Assistant Attorney-General.

JOHN W. HOFFMAN, Jr.
(Acting) Attorney-General.

RCS/afj