

LICENSE--COUNTY COURTS: Pool tables operated in a County  
may be licensed when?

5-18  
May 13, 1935.



Hon. J. T. Pinnell  
Prosecuting Attorney  
McDonald County  
Pineville, Missouri

Dear Sir:

Your request for an opinion, dated May 4, 1935, is  
as follows:

"Battery E., 203rd Artillery, Anderson,  
Missouri, operates a pool room, having  
several tables, on a sort of 'club  
plan.' Charges are made for playing  
on the tables.

"Please give me an opinion as to whether  
the Battery may so operate a pool room  
with several tables without paying state  
and county licenses.

"The Manager of the pool room tells me  
that the net profits are turned into  
the 'Mess' fund.

"I find no exceptions in the statutes  
other than of a table privately owned  
and played on without charge."

Article X, Section 1, Missouri Constitution provides:

"The taxing power may be exercised  
by the General Assembly for State  
purposes, and by counties and other  
municipal corporations, under authority  
granted to them by the General Assembly,  
for county and other corporate purposes."

Article X, Section 10, Missouri Constitution provides:

"The General Assembly shall not impose  
taxes upon counties, cities, towns or  
other municipal corporations or upon

the inhabitants or property thereof, for county, city, town or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."

Pursuant to these constitutional provisions, the Legislature in Chapter 131 R. S. Mo. 1929, has delegated to the County Court the power to assess and levy a tax on pool and billiard tables and has provided a plan and general scheme of putting the licensing into effect. The tax is subject to such limitations as the Legislature has provided..

Section 14272 R. S. Mo. 1929, provides:

"The county court shall have power to license the keepers of billiard tables, pigeonhole tables, jenny lind tables, and all other tables kept and used for gaming, upon which ball and cues are used. At each term, the clerk of said court shall prepare and deliver to the collector of their counties as many blank licenses for the keepers of such tables, hereinbefore mentioned, as the respective courts shall direct, which shall be signed by the clerk and attested by the seal of the court."

Section 14280 R. S. Mo. 1929, provides:

"This chapter shall not apply to any person having set up in his own private residence any one of such tables mentioned in section 14272, when used for his own private use, and for the use of his family, and upon which no charge is made for playing."

The legislative acts above quoted have been in the Statutes for over one hundred years (R. S. Mo. 1835, p. 96) and are substantially the same law that was on the books in the territorial days of Missouri. (1. Missouri Territorial Laws, 1804-1824, p. 699.)

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In the case of Hawkins v. Harris, 263 S.W. 807; 304 Mo. 309, l. c. 318, the plaintiff by mandamus was asking our Supreme Court to compel the County Court to issue a pool table license. The relief was denied and our Supreme Court said:

"As the instant case stands, under the legislative policy of the State, the occupation in which relator sought to engage was not one he could exercise except by grant of a privilege or license from the State. Under the holding of this and some other appellate courts of the State it is not recognized as a useful occupation. It is not an occupation which public welfare demands that he shall be permitted to exercise. His private interest or right in exercising it is not such as 'exists independent of the grant of the power,' to issue him a license, or, independent of the right conferred by the license itself, but is to be created thereby."

#### CONCLUSION.

We are of the opinion that the manager of the pool room described in your request should obtain a license to operate where the County Court has so ordered.

The Statutes provide for the privilege of operating pool tables within county territorial limits, and the privilege can be granted at the discretion of the County Court in all cases whose facts do now fall within the exceptions of Section 14280, supra. In such exceptional cases the privilege license is not necessary.

We find nothing in the Constitution or Statutes of Missouri which exempts Battery E., 203rd Artillery from paying a license tax for the privilege of operating pool tables. The fact that said pool tables are operated by a military unit does not exempt them. The

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fact that the tables are operated on a club plan or that the net profits from the tables are turned into a mess fund does not exempt them. If the operator of these tables establishes an exemption from this privilege tax he must show the Court that the tables are set up in a private residence for the private use of the owner or his family, and that no charge is made for playing upon the tables.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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ROY MCKITTRICK  
Attorney General.

WOS:H