BEES: Power of City of fourth class to prohibit possession of, within city limits.

5-2

April 18, 1935.

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Mr. W. A. Sharp, Jr.,
City Clerk,
Craig, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of March 8, 1935, such request being in the following terms:

"The Board of Aldermen of the City of Craig have requested me to obtain the following information:

Is there a statute in the State of Missouri which prohibits a City of the fourth class from regulating, by ordinance, the possession of bees within the city limits of such City?

An ordinance duly passed by the Board states, in part:

'It shall be unlawful for any person to have in possession on his own premises or premises leased by him, or on any other ground or premises, any stand, hive, colony or colonies of bees within the corporate limits of the City of Craig.'

Can we safely prosecute under this ordinance for an infringement thereof?"

The ordinance recited above is an absolute prohibition, regardless of circumstances, against keeping bees within the city limits.

R. S. Missouri, 1929, Section 7021, gives the board of aldermen of a city of the fourth class certain powers in connection with regulating animals and fowls, in the following language:

> "The board of aldermen may also regulate or prohibit the running at large of cattle, hogs, horses, mules, sheep, goats and all other domestic animals, also geese, ducks, chickens, turkeys and all other domestic fowls and cause such animals or fowls as may be running at large to be impounded and sold in such manner and at such time as may be prescribed by ordinance. They may also provide penalties for the owners or keepers who shall permit such animals or fowls to be at large."

This statute, however, relates to regulation and prohibition of animals and fowls running at large, and not such as are kept on leased or owned premises. Likewise, it might be doubtful if bees would come within the meaning of this section. However, the matter would seem to be settled by the case of Hays v. City of Versailles, 22 S.W.(2)182 (1929), in which an injunction against the enforcement of an ordinance similar to this, except that the keeping of swine instead of bees was its subject, enacted by a city of the fourth class, was sustained on appeal. The court said:

> "Section 3478, R. S. Mo. 1919, authorizes the board of aldermen of cities of the fourth class, within which the city of Versailles falls, to regulate or prohibit the running at large of live stock, including hogs. Section 3477, R. S. Mo. 1919, authorizes the board of aldermen to regulate and suppress pigpens 'and to pass ordinances for the prevention of nuisances and their abatement.' But the legislature has never empowered cities of this class to prohibit the keeping of animals within the city when such keeping does not constitute a nuisance per se. Brown v. Carrollton, 122 Mo. App. 278, 281, 99 S.W. 37. 'A nuisance at law or a nuisance per se is an act, occupation, or structure which is a nuisance at all times and under any circumstances, regardless of location or surrounding.' 46 C.J. pp. 664, 649."

In view of the above definition of a nuisance per se, we do not believe that bees come within this classification, although bees could, under some circumstances, be a nuisance, as was indicated in the case of Olmsted v. Rich, 3 Silv. Sup. 826, 6 N.Y.S. 826.

Our conclusion, therefore, is that a city of the fourth class cannot impose an absolute unqualified prohibition against the possession of bees within its city limits, and that the ordinance in question, which attempts to do this, is void.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General