

CITIES:

INTOXICATING LIQUOR:

) Municipalities shall not increase
) occupation tax of merchants and
) dealers engaged in the sale of non-
) intoxicating beer.

June 22, 1935.

Hon. W. P. Wilkerson,
Prosecuting Attorney
Scott County
Benton, Missouri



Dear Sir:

This will acknowledge your letter requesting an opinion from this department which reads as follows:

"Please refer to Senate Bill #54, Section 13,139-e, paragraph "D", wherein it is provided,

" 'No Municipal Corporation shall increase any occupation tax which it now levies upon any holder of any permit required by this article, in excess of the amount of such tax imposed upon merchants and dealers in the same or similar lines of business, and not holding any such permit.'

"I am being bombarded with requests to tell the cities and towns in my county what this sentence means, and I have told my people that it means that the city shall not levy a greater occupation tax on a 3.2 beer dealer than is levied on dealers in malt liquors of a higher alcohol content. Please advise me what interpretation your office is placing on this sentence."

Section 13139-e of the Non-intoxicating Beer

Act provides in part, in subsection "d" as follows:

"**** No municipal corporation shall increase any occupation tax which it now levies upon any holder of any permit required by this article in excess of the amount of such tax imposed upon merchants and dealers in the same or similar lines of business and not holding any such permit."

In construing the above section of the statute, we rule that the intent of the Legislature was that no municipality should be discriminatory in the levying of an occupation tax on merchants or dealers engaged in the sale of non-intoxicating beer over what said municipalities now levy upon merchants or dealers engaged in the same or similar lines of business.

If a merchant or dealer is engaged in a particular business and also sells, under proper license, non-intoxicating beer, the occupation tax upon the business other than selling non-intoxicating beer cannot be increased over that which is levied as an occupational tax on other merchants or dealers engaged in the same or similar lines of business only.

We conclude that, in our opinion, the occupation tax upon a business other than the sale of non-intoxicating beer shall not be increased because such merchants or dealers engage in the sale of non-intoxicating beer, and that Section 13139-e has no reference to the relative charges that may be charged for 3.2 and 5% beer licenses by municipalities.

Respectfully submitted,

APPROVED:

RUSSELL C. STONE
Assistant Attorney-General.

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

RCS/afj