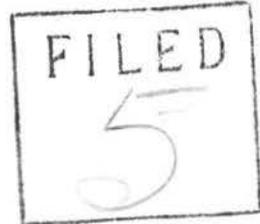


LIQUOR: When and where anyone may sell intoxicating liquor in original package not to be consumed on premises.

December 17, 1937.

Hon. William Barton,  
Representative, Montgomery County,  
Jonesburg, Missouri.



Dear Sir:

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

"May a Village with population of less than 500 prevent any person meeting the qualifications necessary to sell liquor in the original package from obtaining a state license to sell liquor in the original package in such village? Under Section 27 (Laws of Missouri, 1937) and Section 25 (Laws of Missouri 1935, p. 276) it seems that all a Village might do is to set a fee  $1\frac{1}{2}$  times the state fee of \$50.00. Is this view correct?"

The Liquor Control Act specifically provides that local option provisions do not apply to the sale of intoxicating liquor in original packages not to be consumed on the premises. Section 44-a-7 provides:

"The provisions made by this act for local option shall be held to be applicable only to sales for consumption on the premises where sold, and shall not be construed to prevent the sale of intoxicating liquor in the original package and not to be opened or consumed on the premises where sold, nor to prevent the sale, at retail by the drink for consumption on the premises where sold, of malt liquor

containing not to exceed five (5%) per cent of alcohol by weight, under license issued in accordance with the provisions of this act."

Under the Liquor Control Act, a person may sell intoxicating liquor in the original package not to be consumed on the premises when so licensed by the Supervisor of Liquor Control.

Section 22 of the Liquor Control Act, in part, provides:

"Intoxicating liquor shall be sold at retail in the original package upon a license granted by the Supervisor of Liquor Control, and said intoxicating liquor so sold shall not be consumed upon the premises where sold, nor the original package opened on said premises of the vendor, except as otherwise provided in this act. For every license issued hereunder, for sale at retail in the original package, there shall be paid by the licensee to the Supervisor of Liquor Control, the sum of fifty (\$50.00) dollars per year; \* \* \* \*"

Section 25 of the Liquor Control Act, however, provides that said licensee shall pay into the county treasury wherein the premises are located a fee not to exceed a certain amount, and also that said licensee shall pay into the municipal treasury a license fee to be determined by the law-making body of said municipality, not to exceed one and one-half times that charged by the State for such license; also that such municipality may make and enforce ordinances for regulation and control, and provide penalties for violation of said ordinances, where same are not inconsistent with the provisions of the Liquor Control Act.

In view of the above provisions of the Liquor Control Act, it is the opinion of this department that a municipality cannot enact ordinances inconsistent with the statutory provisions

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of the Act. They may, as above stated, enact ordinances not inconsistent with the provisions of the Act.

Therefore, since local option does not apply to sales of intoxicating liquor in the original package, and the Liquor Control Act specifically reads that they may sell intoxicating liquor in the original package when licensed by the Supervisor of Liquor Control, it is the opinion of this department that the municipal authorities may collect a license fee from a person for the sale of intoxicating liquor in the original package not to be consumed on the premises, but cannot prohibit a person qualified and licensed by the Supervisor of Liquor Control from selling intoxicating liquor in the original package not to be consumed on the premises.

Yours very truly,

AUBREY R. HAMMETT, Jr.,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
(Acting) Attorney General.

ARH:HR