

**LIQUOR CONTROL:** City may not suppress or prohibit the sale of intoxicating liquor within its limits. Applicant otherwise qualified cannot be denied city permit merely because city does not desire liquor sold.

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February 26, 1938



Mr. Donald B. Dawson  
Prosecuting Attorney  
Bates County  
Butler, Missouri

Dear Sir:

This department is in receipt of your letter of February 11, 1938, in which you request an opinion as follows:

"The town of Amoret has been asked to grant a liquor license to a man to operate a package liquor store. The citizens of Amoret are very strongly opposed to the granting of the license, and I am quite positive the license will be refused. As I read the Liquor Laws of Missouri, it would seem a license cannot be refused if the applicant (1) is of good moral character, (2) is a qualified legal voter and taxpaying citizen of the county, town, city or village, (3) has not had his license revoked for liquor violation or employed a violator in the business.

"Therefore, if the applicant fulfills all of the requirements of Section 27, Laws of Missouri, 1937, applies for and secures a license from Bates County Court, and tenders the amount of license charge to Amoret, can the Board of Aldermen of Amoret refuse him a right to operate a package liquor store in Amoret on the sole ground the citizens do not want that kind of a business in the town?"

For the purposes of this opinion, we are assuming that the applicant for the liquor permit here is able to qualify for said permit under the laws of this state and the ordinances of the town of Amoret. Further, that the only objection or obstacle is that the city does not desire to have a liquor store within its limits.

Section 25 of the Liquor Control Act (Laws of 1935, page 276) is in part as follows:

"The Board of Aldermen, City Council or other proper authorities of incorporated cities, may charge for licenses issued to manufacturers, distillers, brewers, wholesalers and retailers of all intoxicating liquor, located within their limits, fix the amount to be charged for such license, subject to the limitations of this act, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, provide for penalties for the violation of such ordinances, where not inconsistent with the provisions of this act."

It will be noted that this section only gives a city the power to regulate and control the sale of intoxicating liquors within its limits. As a general proposition of law, it has long been recognized in this state that a city has only such power as is conferred on it by its charter and the laws of the state.

In State ex rel. v. McCammon, 111 Mo. App. 626, the court had under consideration the old dramshop laws. In this case a city had enacted an ordinance regulating the sale of liquor within its limits so unreasonably that its effect was to prohibit the sale of said liquor within the city. The court, in disposing of this matter, held the ordinance invalid and stated at l.c. 632:

"Under power conferred on cities of the fourth class 'to regulate and to license' dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a State with a general policy of conducting licensed saloons, authority to prohibit is excluded. 'The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity; the latter implies its entire destruction or cessation.' Black on Intox. Liq., section 227; 17 Amer. & Eng. Ency. Law (2 Ed.), pp. 285, 286; 1 Dillon on Munic. Corp. (3 Ed.), section 357, note 2, section 363 and notes; Berry v. Cramer, 58 N.J. Law 278; Steffy v. Monroe City, 135 Ind. 466; Champer v. Greencastle, 138 Ind. 339; Ex parte Hinkle, 104 Mo. App. 104."

#### CONCLUSION

Therefore, it is the opinion of this department that the Board of Aldermen, City Council or other proper authorities of incorporated cities have only the authority to regulate and control the sale of intoxicating liquors within the limits of said city in a manner not inconsistent with the laws of the state. That the power to regulate and control said business does not confer on the city the right to suppress or prohibit said business.

It is further our opinion that if the applicant for a city liquor license is qualified in all respects, that the city cannot refuse him a license solely because they do not desire intoxicating liquors sold within the limits of said city.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED BY

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J. E. TAYLOR  
(Acting) Attorney General

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