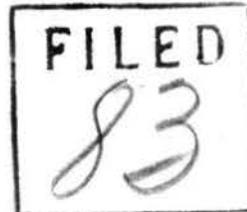


INTOXICATING LIQUOR: Person paying only sales tax not eligible for liquor license. Section 27 of Liquor Laws does not apply to 3.2 per cent beer license.

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Honorable B. Hugh Smith
City Attorney
Cape Girardeau, Missouri

Dear Sir:

We have received your letter of July 25th, which reads as follows:

"On page 533 of the Laws of 1937 Section 27 sets out the qualifications for an applicant applying for a license to sell intoxicating liquors. Part of which reads as follows: 'No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a 'tax paying citizen' of the county, town, city or village.'

It is almost impossible to tell from examining the various liquor laws passed by the legislature whether or not the qualifications laid down in the above section are also required of an applicant to sell 3.2 beer.

However, I am assuming that the applicant for a license to sell either 3.2 or 5 percent beer or intoxicating liquors must meet the requirements set out in above section 27.

I am familiar with the Sections of the Statutes that lay down certain qualifications for certain officers and which provide as for instance for a city officer that he must have paid a city tax the year preceding his election, but I have not been able to find

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where our Courts have defined the meaning of 'A tax paying citizen of the county, town, city or village' relating to an applicant for license to sell 3.2 beer or intoxicating liquors.

In this day and age of such variety of taxes it would seem that many persons would now be considered tax payers who have not heretofore been so considered. For example every one who purchases merchandise in this State pays a sales tax. We have income tax and various degrees and forms of license taxes.

Do you construe the phrase 'A tax paying citizen of the county, town, city or village' to mean that the applicant must have paid city taxes on real property or personal property during the year preceding the time of his making an application for a license to sell in our city?"

Section 27 of the Liquor Control Act, Laws of Missouri, 1937, page 533, does provide, as you state, that "No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a tax paying citizen of the county, town, city or village * * * *". However, said section 27 applies only to licenses for the sale of intoxicating liquor, such as 5 per cent beer, whiskey, etc., and does not apply to 3.2 per cent beer licenses.

Furthermore, there is no similar section in the non-intoxicating or 3.2 per cent beer laws which contains any qualifications for license such as is contained in Section 27. The manufacture and sale of non-intoxicating or 3.2 per cent beer is governed entirely by Sections 13139-a to 13139-z-24 as contained in Laws of Missouri, 1933, and amended in Laws of Missouri, 1935.

As we said above, said Section 27 applies only to the sale of intoxicating liquor and not to 3.2 per cent beer.

You have asked what is meant by the statutory term "A tax paying citizen of the county, town, city or village". Recently this office was asked to render an opinion as to whether or not a person who pays only sales taxes and no other taxes is eligible under the terms of said Section 27 for a

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license to sell intoxicating liquors. We briefed this question in connection with that request, and we are enclosing copy of said opinion, which was addressed to the Honorable Walker Pierce, Supervisor of Liquor Control, and dated May 26, 1939. In that opinion we concluded that a person seeking a liquor license must have paid a tax, or at least must be liable for the payment of a tax to the county, town, city or village; that since the Missouri Sales Tax is a tax payable to the state, and to the state alone, and not to the county, town, city or village, a person who pays only sales taxes and no other taxes whatsoever to the county, town, city or village in which he seeks a liquor license is not eligible under the law for a license to sell intoxicating liquors.

Respectfully submitted:

J. F. ALLEBACH
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

JFA:VC
Enc.