

COUNTY COURTS: Cannot require licenses and assess taxes
Pinball Machines thereon unless empowered to do so by statute.

June 1, 1945

Honorable H. A. Kelso
Prosecuting Attorney
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Nevada, Missouri

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Dear Sir:

We acknowledge receipt of your request for an official opinion from this department. Your letter reads:

"In my official capacity as prosecuting attorney of Vernon County, Missouri, and at the request of the Vernon County Court I would like an opinion from your office on the following set of facts:

"In Vernon County, Missouri, there are a number of so-called pin-ball machines operating. They are not used for gambling but for amusement only. Could these machines be taxed by the County under our present law?"

We assume, for purposes of this opinion, that your conclusion is correct that the so-called pinball machines are not used for gambling but for amusement only. Also we are assuming that you mean, could these machines be licensed by the county under our present law.

Of course, these so-called pinball machines are subject to assessment and levy of personal taxes as are any other articles of personal property. But, if the county court had any authority to license such pinball machines that authority would, necessarily, have to be granted by the Legislature in some statutory enactment. Section 15397, R. S. Mo. 1939, empowers the county court to license certain tables, and provides as follows:

"The county court shall have power to license the keepers of billiard tables, pigeonhole tables, jenny lind tables, and all other tables kept and used for gaming, upon which balls and cues are used. At each term, the clerk of said court shall prepare and deliver to the collector of their counties as many blank licenses for the keepers of such tables, hereinbefore mentioned, as the respective courts shall direct, which shall be signed by the clerk and attested by the seal of the court."

(Emphasis ours.)

Obviously the power to license under this section does not extend so as to include the description of pin-ball machines.

Quoting from *Lancaster v. County of Atchison*, 180 S. W. (2d) 706, l. c. 708, and other authorities quoted therein:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' *Sturgeon v. Hampton*, 88 Mo. 203, loc. cit. 213. Quoted with approval in the case of *Morris et al. v. Karr et al.*, 342 Mo. 179, 114 S. W. 2d 962, loc. cit. 964.

"Both parties to this suit agree that counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the

corporation--not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' Dillon on Municipal Corporations, 3rd Ed., Section 89. We have repeatedly approved this quotation. See State ex rel. City of Blue Springs v. McWilliams et al., 335 Mo. 816, 74 S. W. 2d 363; State ex rel. City of Hannibal v. Smith, State Auditor, 335 Mo. 825, 75 S. W. 2d 367, 372."

In 1873 when the General Assembly first enacted the section, which is now 15397, supra, a county court sought to license certain tables mentioned in said section, after its passage by the General Assembly and before it had become a law. The case was appealed to the Missouri Supreme Court, Neef v. Maguire, 52 Mo. 493, and the court held:

"* * * The order of the County Court, therefore, made before the taking effect of the law under which it was attempted to be made, attempting to levy a tax or license on pigeon hole table, etc., was wholly without authority and void, * * * * *"

Conclusion

Therefore, it is the opinion of this department, in the absence of a statute empowering the county courts to license the machines mentioned in your request, that any license or tax assessed therefor would be null and void.

Respectfully submitted,

A. V. OWSLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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