

COUNTY COURT:  
INTOXICATING LIQUOR:  
LIQUOR DEPARTMENT:

County court authorized to charge a license fee to holder of a set-up license where intoxicating beverages are consumed on premises covered by said license.

September 22, 1954



Honorable Olin B. Johnson  
Prosecuting Attorney  
Schuyler County  
Lancaster, Missouri

Dear Mr. Johnson:

This will acknowledge receipt of your request for a copy of an opinion rendered by this department to Honorable J. S. Lincoln, relative to public roads under date of June 23, 1954, a copy of which we are enclosing; also your request for an opinion which reads:

" \* \* \*

"I have also received a request from our county court as to obtaining an opinion as to whether there is any authority for requiring a holder of a 'set-up' license where intoxicating beverages are consumed to also obtain a county license in addition to the state license."

We assume this question arises by reason of Section 311.480, RSMo 1949. Under Section 311.480, Subsection 3, Revised Statutes of Missouri, 1949, it provides that in any incorporated city having a population of more than 20,000 inhabitants, the board of aldermen, city council, or other proper authority, in addition to the license fee required by the state may require a license fee not to exceed \$300.00. This does not mean that by specifically authorizing only cities having a population of more than 20,000 inhabitants in said statute to also charge a particular fee for operating such place of business in said city, that it excludes counties and other cities from charging a license fee. Such a construction might be invoked under the statutory rule of construction that the inclusion of

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one is the exclusion of all others. However, such a rule of construction should never be invoked to defeat the legislative intent or purpose in enacting such a statute.

We are of the opinion had it not been for the foregoing exception contained in Section 311.480 then such cities could have only charged for a license fee an amount not to exceed \$90, or one and one-half times that charged for a state license (See Section 311.220, Revised Statutes of Missouri 1949.) But the legislature desired to vest authority in such cities to charge more for such license fee.

Subsections 1 and 2 of Section 311.480, Revised Statutes of Missouri, 1949, read as follows:

"1. It shall be unlawful for any person operating any premises where food, beverages or entertainment are sold or provided for compensation, who does not possess a license for the sale of intoxicating liquor, to permit the drinking or consumption of intoxicating liquor in, on or about said premises between ten P.M. and six A.M. the following day, without having a license as in this section provided.

"2. Application for such license shall be made to the supervisor of liquor control on forms to be prescribed by him, describing the premises to be licensed and giving all other reasonable information required by the form. The license shall be issued upon the payment of the fee required herein.

"A license shall be required for each separate premises and shall expire on the thirtieth day of June next succeeding the date of such license. The license fee shall be sixty dollars per year and the applicant shall pay five dollars for each month or part thereof remaining from the date of the license to the next succeeding first of July. Applications for renewals of licenses shall be filed on or before the first of May of each year."

Subsection 3 of said section reads in part as follows:

"\* \* \* In any incorporated city having a population of more than twenty thousand

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inhabitants, the board of aldermen, city council, or other proper authorities of incorporated cities may, in addition to the license fee herein required, require a license not exceeding three hundred dollars per annum, payable to said incorporated cities, and provide for the collection thereof; \* \* \*"

The statutory authority for the county court charging a license fee for such establishments will be found under Section 311,220, Revised Statutes of Missouri, 1949, which reads in part as follows:

"1. In addition to the permit fees and license fees and inspection fees by this law required to be paid into the state treasury, every holder of a permit or license authorized by this law shall pay into the county treasury of the county wherein the premises described and covered by such permit or license are located, or in case such premises are located in the city of St. Louis, to the collector of revenue of said city, a fee in such sum not in excess of the amount by this law required to be paid into the state treasury for such state permit or license, as the county court, or the corresponding authority in the city of St. Louis, as the case may be, shall by order of record determine, and shall pay into the treasury of the municipal corporation, wherein said premises are located, a license fee in such sum, not exceeding one and one-half times the amount by this law required to be paid into the state treasury for such state permit or license, as the law-making body of such municipality, including the city of St. Louis may by ordinance determine."

The foregoing statute makes it mandatory that every such state licensee whose premises are located in a county shall pay into said county treasury a sum not in excess of the amount provided by law to be paid into the state treasury for such permit or license as the county court shall by order

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of record determine. In other words the county court may charge less than \$60, or an amount not to exceed \$60.

CONCLUSION

Therefore, it is the opinion of this department that a county court shall charge a license fee to every holder of a set-up permit or license where intoxicating liquor is consumed on the premises described and covered by such permit or license and when said premises are located in said county. Furthermore, said charge shall conform to the provisions of Section 311.220, Revised Statutes of Missouri, 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

Enclosure - J.S. Lincoln  
Cainsville, Mo.  
6-23-54

ARH:vlw