

LICENSES:

Annual state license tax of ten dollars prescribed by Section 318.020, RSMo 1949, applicable to pool table. County collector has duty under Section 318.040, RSMo 1949, to collect any annual county license tax authorized under Section 318.040, RSMo 1949.

COUNTY COLLECTORS:

September 24, 1952



Honorable John W. Belew
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Mr. Belew:

The following opinion is rendered in reply to your request reading as follows:

"Does Section 318.020 of the Revised Statutes of Missouri, 1949, in saying that billiard tables shall be licensed for the sum of twenty dollars for each billiard table, mean that each pool table shall also be licensed for the sum of twenty dollars or would a pool table come under the classification of the other tables where the license is only ten dollars? Black's Law Dictionary says that for the purposes of statutes a pool table is a billiard table with pockets and cites an Illinois case and a Louisiana case but in looking through the Missouri Digest I have been unable to find a Missouri case in point.

"Section 318.030 states that the County may levy a tax which shall not be greater than is allowed for state purposes. The County Court has set a license fee of Twenty Dollars for each billiard table. Does the Collector collect both the State and County tax making a total of Forty Dollars for each table?"

Statutory provisions relative to the licensing of billiard tables and other tables kept and used for gaming, upon which balls and cues are used, are found in Chapter 318, RSMo 1949.

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Section 318.010, RSMo 1949, 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, herein mentioned, as the respective courts shall direct, which shall be signed by the clerk and attested by the seal of the court."

Section 318.020, RSMo 1949, provides as follows:

"The collector shall deliver to any person who shall have been licensed, a license to keep any such table mentioned in section 318.010 in their respective counties, for a term of twelve months, upon the payment by the applicant of the sum of twenty dollars for each billiard table, and ten dollars for each other table described in said section, and the collector shall countersign such license before delivering the same to the applicant; provided, that if the applicant be the keeper of more than one of such tables, the number may be named in one license, and in such case the clerk shall not be entitled to more than one fee as provided in section 318.050."

Section 318.050, RSMo 1949, provides as follows:

"The county courts shall charge the collectors with all blank licenses delivered to them, and at every regular term shall settle with the collectors for all such licenses delivered to them, and credit them with all the blank licenses which they may return, and at the same time the collectors shall pay the clerk respectively fifty cents for every such blank license not returned."

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Section 318.060, RSMo 1949, provides as follows:

"The collector shall stand chargeable with all the blank licenses not returned, and the county court at each regular term shall cause the clerks to certify to the state auditor the amounts with which the collectors stand chargeable, who shall charge the respective collectors accordingly."

In this opinion we are construing a licensing statute, and the general rule of construction to be followed is stated in the following language found in *National Exhibition Co., v. City of St. Louis, et al.*, 136 S.W. (2d) 396, 235 Mo. App. 485, l.c. 493:

"The general rule with respect to the imposition of license fees is stated in 62 C.J. 852, as follows:

"Ordinances imposing license fees, being in derogation of the common law, are to be strictly construed in favor of the person against whom they are sought to be applied."

"In 17 R.C.L. 475, the rule of construction of license laws is stated as follows:

"In construing a license tax law courts regard the substance and purpose of the ordinance rather than its form and language, and where doubt exists as to the meaning and scope of language imposing any tax, such doubt is to be resolved in favor of the taxpayer."

Section 318.020, RSMo 1949, quoted supra, clearly imposes an annual state license tax of twenty dollars on each billiard table, and an annual state license tax of ten dollars on "each other table" described in Section 318.010, RSMo 1949, which section definitely refers to billiard tables and "all other tables kept and used for gaming, upon which balls and cues are used." In such section pool tables are not specifically mentioned, but common knowledge attests the fact that pool tables are tables upon which balls and cues are used, and that the ordinary game of pool is a separate and distinct game from billiards. We construe Section 318.010 and Section 318.020, RSMo 1949, together, as limiting the annual state license fee for a pool table to ten dollars and that such table comes under the description of "all other tables kept and used for gaming, upon which balls and cues

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are used" set forth in Section 318.010, RSMo 1949.

The second question posed in the opinion request relates to the duty of collecting these license taxes. Section 318.010, RSMo 1949, cited supra, discloses that the county court prepares and delivers to the county collector blank licenses for the keepers of the tables discussed herein, and Section 318.050, RSMo 1949, cited supra, discloses that the county collector is specifically charged with such blank licenses. After having been charged with such blank licenses, Section 318.060, RSMo 1949, provides that the county court at each regular term shall cause the county clerk to certify to the state auditor the amounts with which the collectors stand chargeable by reason of his possession of any blank licenses not returned by him to the county court. Such procedure makes the county collector the proper person to collect the annual state license tax on these tables. There still remains the question of the county collector's duty to collect any annual county license tax that may be set by the county court under Section 318.010, RSMo 1949, quoted supra, and Section 318.030, RSMo 1949, such latter section providing as follows:

"No county court, city or town authorities shall levy a greater amount for a license tax on any table mentioned in section 318.010, for county, city or town purposes, than is allowed for state purposes."

We feel that the duty of the county collector to collect any annual license tax levied by the county court on these tables is found in the language of Section 318.040, RSMo 1949, which provides as follows:

"The state, county, city or town, as the case may be, shall have a lien, and a lien is hereby created in their favor, upon any such table mentioned in section 318.010, to the amount of the licenses thereon; and if any owner or keeper thereof shall fail or refuse to pay to the respective collectors or other persons authorized to collect the same, the amounts of the licenses due the state, county, city or town, within ten days after such table shall be set up, then it shall be the duty of the respective collectors or persons authorized to collect such licenses to levy upon and seize such table or tables, and sell the same at public auction, for cash, to pay the amount of said licenses."

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In the statute just quoted above we find that a lien for the annual license tax on these tables is established, and that such lien is to be enforced by the respective collectors of the state, county, city or town, as the case may be when the keepers of such tables refuse to pay such license taxes "to the respective collectors or other persons authorized to collect the same." Nowhere in the statutes do we find that any person, other than the county collector is charged with the duty of collecting the county license tax which may be levied.

CONCLUSION

It is the opinion of this office that the annual state license tax of ten dollars prescribed by Section 318.020, RSMo 1949, for tables described in Section 318.010, RSMo 1949, is applicable to a pool table as distinguished from a billiard table, and that Section 318.040, RSMo 1949, makes it the duty of the county collector to collect not only the state license tax prescribed but also any annual county license tax authorized.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney General

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