COUNTY COURT: INTOXICATING LIQUOR: All persons engaged in retail business of intoxicating liquor required to take out a county license. County may enforce collection of license fee by an action at law.

May 7, 1935.

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Mr. John A. Eversole
Prosecuting Attorney
Washington County
Potosi, Missouri

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office which reads as follows:

> "I would appreciate your sending me your opinion of Section 24, of the Intoxicating Liquor law passed in the Special Session of 1933 & 1934, relative to the powers of the County Court to impose and enforce collection of the license provided in said Section.
>
> "I am confronted with the situation of a dealer refusing to purchase the license because the law does not require him to buy it and does not provide a method of collection to be carried out."

Section 24 of the Liquor Control Act of the State of Missouri reads as follows:

> "The county court in each county is hereby authorized to make a charge for license issued to retail dealers in all intoxicating liquor, the charge in each instance to be determined by the county court, by order of record, but said charge shall in no event exceed the amount provided for in Section 22 of this act, for state purposes."

While the above section is inartistic in form, nevertheless, it is plain that the county court is authorized

to make a charge for licenses issued to retail dealers in intoxicating liquor. The charge is to be fixed by the county court by order of record but may not exceed the amount provided for in Section 22 of the Liquor Control Act.

It is a fundamental principle of law, too well established to require any citation of authority that a statute is to be construed so as to ascertain the legislative intent expressed therein and, if possible, so as to avoid a reasonable or absurd conclusion. To hold that the county court has the right to charge for a license issued but does not have the right to require all persons engaged in the retail liquor business to purchase a county license would be reaching an absurd conclusion that we do not believe the Legislature intended.

It is also a well recognized principle of law that that which is implied in a statute is as much a part of it as that which is expressed. In the case of In re Sanford 336 Mo. loc. cit. 692, the Court said:

> "(c). There is a familiar rule of statutory construction which fits this case like a glove fits the hand, namely, That when a power is given by statute, everything necessary to make it effectual or requisite to attain the end, is necessarily implied. (1 Kent's Com. 464; Stief v. Hart, 1 N. Y. 20 (Jewett, C. J.); Mitchell v. Maxwell, 2 Fla. 594; In re Neagle, 135 U. S. 1; Commonwealth v. Conyngham, 66 Pa. St. 99, Witherspoon v. Dunlap, 1 McCord, 546; City of St. Louis v. Bell Telephone Co., 96 Mo. 623; Union Depot Ry. Co. v. Southern Ry. Co., 105 Mo. 562; Springfield v. Weaver, 137 Mo. 650.)
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> "It is also a well settled rule of construction, that where a statute contains grants of power, it is to be construed so as to include the authority to do all things necessary to accomplish the object of the grant. (Lewis' Sutherland on Stat. Const., Sec. 508, and cases cited. See also Ex Parte Martin, L. R. 4 Q. B. 212; People v. Hicks, 15 Barb. 160; Matter of Oath before Justices, 12 Coke 130; In re Dunn, 9 Mo. App. 255.)
> The latter case is very much like the

one at bar."

It is therefore our opinion that a person engaged in the retail liquor business in a county must take out a county license when the county court has by order of record fixed the amount to be charged for said license.

Section 24, supra, does not provide any method for collecting the license fee charged by the county court. It has been held, however, by the courts on numerous occasions, that where a statute fails to provide a method for the collecting of a license tax that an ordinary suit at law will lie for the collection thereof.

In the case of City of St. Louis v. United Railways Company of St. Louis, 174 S. W. loc. cit. 93, the Supreme Court speaking through Walker, J. said:

> "(12) The defendant, in addition to the foregoing, contends that the levying of the tax under the ordinance does not create a debt; that the ordinance provides an exclusive remedy therein for its enforcement, which remedy is wholly penal, and cannot therefore be enforced in an action for a debt. From the early case of Carondelet v. Picot, 38 Mo. 135, to State ex rel. v. Trust Co., 209 Mo. loc. cit. 490, 108 S. W. 97, it has been held that a tax is not a debt or in the nature of a debt; that it is not founded on contract and operates in invitum; and that, if a remedy is specified for the collection of a tax , it will be held to be exclusive, where no other is provided. This holding, however, should be construed in the light of the modifying rule that, where a statute or ordinance wholly fails to provide a remedy for the enforcement of the payment of taxes, the right arises to institute a civil suit at law therefor. This doctrine has found appropriate lodgment in many cases in this jurisdiction in which the matter of the collection of taxes has been discussed. In the Picot Case, supra, the court said in substance; If a tax be imposed and no method provided for its

recovery, a resort to legal proceedings becomes a matter of necessity, where the Legislature has failed entirely to indicate a mode or manner of collection.

"In State v. Severance, 55 Mo. 378, this court said, where a statute authorized the taxation of railroads and designated no particular manner in which the towns or cities where the taxes are to be levied might proceed to collect same, a resort might be had to an ordinary action at law to enforce payment. The rule being announced generally that, where a statute gives a right and no remedy, resort may be had to the usual remedy applicable to the case.

"In Phelps v. Brumback, 107 Mo. App. loc. cit. 25, 80 S. W. 680, the court says:

"'If the statute authorizes the imposition of a tax but prescribes a remedy for its collection, the usual 'action' for a debt may be had.'

"In State ex rel. v. Dix, 159 Mo. App. 573, 141 S. W. 445, the Court said:

"'Where the statute or ordinance * * * fails to provide a remedy, an implication arises that the legislative body intended that a civil suit at law would lie for the collection of the tax; but, where an adequate remedy is provided, the implication must be the other way.'"

And further at loc. cit. 94, the Court concluded:

"Regardless, therefore, of whether taxes are debts in the sense of ordinary money obligations growing out of contracts, they are in the nature of debts arising out of and necessarily incident to the duty the citizen owes as his portion required to be contributed to the support of that intangible thing called the body politic; and the government, whether it be state or municipal, has the same right to enforce that duty as if it were a debt, and in the same way. State ex rel. v. Trust Co., 209 Mo. 490, 108 S. W. 97;

Greeley v. Bank, 98 Mo. 458, 11 S. W. 980; Perry v. Washburn, 30 Cal. loc. cit. 331; People v. Seymour, 16 Cal. 340, 76 Am. Dec. 521; Sav. Bank v. U. S. 19 Wall. 227, 22 L. Ed. 80."

CONCLUSION.

In view of the above, it is the opinion of this department that a county court may, by order of record, require all retail dealers in intoxicating liquor to take out a county license. They may charge for such license an amount to be determined by them which shall not exceed the amount provided for in Section 22 of the Liquor Control Act for State licenses. It is our further opinion that the county may enforce collection of the license fee against any retail liquor dealer by an ordinary action at law as for debt.

Very truly yours,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JET/afj