LIQUOR:
COUNTIES: A county cannot charge and collect a license fee from distillers whose premises are not located within such county.

March 14, 1940

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Honorable Harold Fenix
Collector of Revenue
Jasper County
Carthage, Missouri

Dear Sir:

We have received your letter of March 7, which reads as follows:

"Below is a copy of a recent court order made by the Honorable County Court of Jasper County, Missouri, as follows, to-wit:

'For the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of intoxicating liquors of all kinds, to, by or through a duly licensed wholesaler within this State, and this County of Jasper, State of Missouri, any person, partnership, association of persons or corporation, shall first pay into the county treasury the sum of three hundred dollars, ($300.00) per year.'

I have had a number of letters from distilling companies, and their attorneys, protesting that $300.00 is an excessive charge, in view of the fact that the state asks only $250.00 for the same type license.

Please advise me, at your earliest convenience, which amount can lawfully be charged. I am holding several checks in the amount of

$300.00, until I receive your opinion.

Also, please advise me if the above court order should apply to distilling companies which have located their business premises outside the county of Jasper, State of Missouri, and if above order is in accordance with Section 21, Session Acts 1937, page 529, and Section 25, Session Acts 1935, page 276."

One of the questions you have asked is whether or not the order of the county court which you have set out in your letter should apply to companies engaged in distilling intoxicating liquors when the premises of the distillers are located outside of Jasper County, Missouri, and the company has no premises whatsoever located within such county.

It is a well recognized principle of law that when the legislature provides a uniform system for the regulation, control and licensing of the liquor traffic, the only existing rights and powers are those contained in any such uniform legislative system. In other words, the only authority any political subdivision, such as a county or city, might have to regulate and control the sale of intoxicating liquor must be delegated by the Legislature in its uniform system. This rule is thus expressed in 33 C. J. 521, as follows:

"In respect to the enactment of ordinances prohibiting or regulating the traffic in liquors, municipal corporations have been consistently held to have only such powers as are expressly conferred upon them by their charters or by statute, or such as are necessarily or fairly implied in or incident to the powers expressly granted, * * * ."

The Supreme Court of Missouri has also said that

the powers of county courts are limited and defined by statutes and the acts outside of and beyond statutory authority are void.

The Supreme Court of Missouri, in the case of Morris v. Karr, 114 S. W. (2nd) 962, said at l.c. 964:

> "In Sturgeon v. Hampton, 88 Mo. 203, at page 213, the rule was early announced which has been generally recognized in this state as follows: '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.'

The only authority given the counties by the Liquor Control Act is contained in Section 25, Laws of Missouri 1935, page 276. The applicable part of this section reads as follows:

> "In addition to the permit fees and license fees and inspection fees by this act required to be paid into the state treasury, every holder of a permit or license authorized by this act 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 act 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 * * * * *."

It will be observed that the counties by and through their county courts, are authorized to enter an order of record requiring license holders to pay into the county treasury of the county "wherein the premises described and covered by such permit or license are located" certain fees which shall not exceed the amount charged by the State of Missouri. This right, however, is given to the counties only when the premises described in the license are located within the confines of the particular county. Nowhere is such a right given to the county when none of the premises are located within its limits.

A similar situation was before the St. Louis Court of Appeals in the case of Fischbach Brewing Company v. City of St. Louis 95 S. W. (2nd) 334. In that case, the Board of Aldermen of the City of St. Louis passed an ordinance pursuant to the supposed authority given the city by said Section 25 of the Liquor Control Act. The ordinance purported to exact license fees from a manufacturer of beer which manufactured its product in another city and which had no established place of business in the City of St. Louis. In other words, the city by ordinance attempted to impose a license fee on a manufacturer or brewer of beer for the privilege of selling to wholesalers within the City of St. Louis, although the brewery had no "premises" whatsoever within the city limits. In holding that the city had no authority to pass such an ordinance or impose any such license fee because this right had not been given the city by the state law, the court said l.c. 338:

> "It is charged in the petition, and urged by plaintiff in its brief, that section 10 of Ordinance No. 40274 of the city of St. Louis, hereinbefore set out, is broader than, and inconsistent with, the provisions of said section 25 of the Liquor Control Act as originally enacted

and by reason thereof the city of St. Louis is without power or authority to enforce such ordinance requiring the plaintiff to pay a license fee to sell and deliver its beer in the manner and under the circumstances alleged in the petition to retailers in the city of St. Louis or requiring the plaintiff to take out any merchant's license for the sale of its product in the city of St. Louis.

The determination of this question necessarily involves the meaning and proper interpretation of said section 25 of the Liquor Control Act. Putting ourselves as near as humanly possible in the position of the makers of the law at the time of its enactment and taking into consideration the surroundings and contemporaneous and prior history, we are forced to the conclusion that the primary and principal objective of the lawmakers was to raise much needed revenue and to stimulate and encourage the establishment and maintenance of brewery plants in order to meet, to some degree, the distressing and pressing problem of state-wide and nation-wide unemployment. The great depression which had been in existence, and which, probably, reached its worst stages in the year 1933, had dried up many sources of the supply of necessary revenue to finance the state and local governments and all of their usual and varied activities. The same year of 1933 witnessed the repeal of the Eighteenth Amendment, by the archaic and cumbersome method in vogue, resulting in the adoption of the Twenty-First Amendment to the Federal Constitution. Therefore, the states which, like Missouri, passed laws in harmony with the changed conditions growing out of the abrogation of the Eighteenth Amendment, found opened up to them a great field for securing much needed revenue from intoxicating liquors, which had been denied to them for years theretofore.

Now, if the construction to be placed on section 25 of the Liquor Control Act should be that the manufacturers or brewers of beer located in one municipality could not sell their products by wholesale in any other municipality in the state without paying a heavy license fee so to do, imposed by each and every municipality in which they might seek to dispose of their manufactured products, it is very apparent that such manufacturers or brewers could not successfully remain in business, as they could find no outlet for their products and this result would necessarily defeat what is apparent were the main objectives of the lawmakers at the time of the enactment of said Liquor Control Act. The hoped for revenue which the legislators had in mind would not, and could not, of course, materialize, and, likewise, their other objective of furnishing employment for the unemployed would fall by the wayside. The need for more revenues was pressing; shrinkage in values, by reason of the stagnation in business, made the payment of taxes very burdensome and onerous, and, in many cases, impossible, so that laws creating moratoriums on foreclosures and granting relief to overburdened taxpayers were enacted in many states of the American Union. Such a construction would necessarily defeat the very objects which the lawmakers obviously had in mind at the time. So that, when we view all the surrounding circumstances we see a reason for not giving this construction to the provisions of said section 25 of the Liquor Control Act. A cardinal rule of statutory construction is to give effect to the legislative intent, where ascertainable; another is to favor such a construction which would tend to avoid injustice, oppression, and absurd and confiscatory results and be in harmony with the rule of reason. The benign objectives heretofore pointed out

were surely within the legislative intent as shown by all the surrounding circumstances covering the period in which this law was enacted. Rutter v. Carothers, 223 Mo. 631, 643, 122 S. W. 1056; State ex rel. Emmons v. Farmer, 271 Mo. 306, 316, 196 S. W. 1106; Stack v. General Baking Co., 283 Mo. 396, 411, 223 S. W. 89; State ex rel. Taylor v. Daues, 313 Mo. 200, 211, 281 S. W. 398. The insertion of the word 'located' in section 25 of the Liquor Control Act by the next General Assembly was to make clear the legislative intent in enacting the original section, that a city should not be authorized to exact any license fee from a manufacturer or wholesaler having no place of manufacture or established place of business in said city. 2 Sutherland on Statutory Construction (2d Ed.) p. 777, Sec. 401; Hugo v. Miller, 50 Minn. 105, 52 N. W. 381, loc. cit. 383; 25 R.C.L. p. 1064, Sec. 288; United States v. Freeman, 3 How. 556, 564, 565, 11 L. Ed. 724, 728. It follows therefore, that the plaintiff, by the terms of its petition, having no place of manufacture or established place of business located within the limits of the city of St. Louis, was not included in the class enumerated in the statute. Following out this construction of said section 25 of the Liquor Control Act, it follows that the Legislature necessarily excluded and withheld from every municipality of the state the right to exact any license fee whatsoever for the manufacture or sale of intoxicating liquor from any person or corporation not embraced within any of the classes there specifically enumerated or not located within the corporate limits of such municipality, thus falling under the rule of statutory construction of expressio unius est exclusio alterius. State ex inf. Conkling ex rel. Hendricks v. Sweaney, 270

> Mo. 685, 688, loc. cit. 692, 195 S. W. 714.
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> In so far as section 10 of said ordinance of the city of St. Louis purports to require a manufacturer of intoxicating liquor, whose plant is located in another municipality, to take out such license, it is broader than the state law, and, therefore, null and void, as being contrary to the legislative policy of the state, * * * ".

It follows, therefore, that if the "premises" of any distilling company are located outside of Jasper County, the court has no authority to charge a license fee.

You also ask whether $300 is an excessive charge. As stated above, if the "premises" are not located within the county, then no fee can be charged. However, if the distillery is located within Jasper County, then it appears that the fee is not excessive. Section 25 authorizes the counties to charge a fee when the premises are located within the county "not in excess of the amount by this act required to be paid into the state treasury for such state permit or license." The state, under the terms of Section 21 of the Liquor Control Act, Laws of Missouri 1937, page 529, charges a distiller $200 for the privilege of distilling or manufacturing, and a further sum of $250 for a solicitor's permit authorizing the distillery to solicit and sell to wholesalers. The applicable parts of said Section 21 read as follows:

> " * * for the privilege of manufacturing, distilling or blending intoxicating liquor of all kinds within this state the sum of two hundred ($200.00) dollars; * * *
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> * * for the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of intoxicating liquors of all kinds, to, by or through

> a duly licensed wholesaler within this state, the sum of two hundred fifty ($250.00) dollars; * * * * ."

Therefore, a distiller, under such circumstances, would pay the state the sum of $450 for the privilege of distilling and selling to wholesalers only, and the $300 fee the county court has provided is within that figure. The above quoted parts of Section 21 apply only to distillers and do not apply to brewers of beer. As we understand your request, you have in mind only distillers. Other parts of Section 21 provide the fees applicable to brewers.

CONCLUSION

We are of the opinion that a county court has no authority to make an order requiring distillers to pay a license fee to the county for the privilege of selling intoxicating liquor to wholesalers when the distiller is not engaged in manufacturing his product within said county and has no "premises" whatsoever located therein. The county can charge and collect a license fee from distillers whose premises are located within the confines of the county and the only restriction imposed by law under such conditions is that the amount of the fee shall not be in excess of the amount required to be paid into the state treasury for a state permit.

Respectfully submitted,

J. F. ALLEBACH
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General
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