LIQUOR CONTROL: (1) Counties not authorized to issue licenses, but should give dealer something as evidence or proof that he had paid county fee.
(2) Person not paying county fee is subject to prosecution and his state liquor license may be revoked.
(3) County Court may not pay salary of employee of Liquor Department.

February 14, 1938

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Mr. George E. Heneghan
St. Louis County Counselor
418 Olive Street
St. Louis, Missouri

Dear Sir:

This department is in receipt of your letter of January 22, 1938, in which you request an opinion on three questions. We shall take these questions up in the order you have presented them.

I

"Has the County Court authority to issue a liquor license to a dealer, or is the County Court confined to the collection of a fee in such sum (not in excess of the amount by this act required to be paid into the state treasury for such permit or license) as the County Court shall, by order of record, determine?"

Section 25, Laws of 1935, page 276, is in part 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 is true, as you have stated in the body of your letter, the repeal of Section 24, Laws of 1933, Ex. Sess. Acts, page 77, and the enactment of Section 25, supra, has made the provisions of Section 25, supra, confusing as to whether or not the county courts of this state may now issue a license or only collect a fee for the privilege of selling liquors within a county.

The section itself at no time refers to a license to be issued, but we think the reasonable interpretation to be given the provisions of this section is as follows:

The county court is authorized to charge each dealer in liquors a certain sum. This is to be done by an order of record. The payment of this sum is a prerequisite to engaging in the business of selling liquors in the county, (as we shall illustrate later). This being true, it is necessary that the person paying said sum to the county receive something as evidence that he has complied with Section 25, supra, and the order of the court made pursuant thereto. The necessity of a person having something as evidence that he has paid the county charge is illustrated by reference to a ruling of the Supervisor of Liquor Control to the effect that each applicant for a state license must, before said state license is issued, submit proof that he has paid the charges made by counties or cities of this state. This evidence, we think, may be in the form of a receipt, permit, license or a certified copy of the order of the county court concerning said liquor dealer, showing payment by him of the charge fixed by the court. It may also be, we think, by any other means which will effectuate the rule above referred to.

The mere application of one of the above terms to the evidence given by the Court to the dealer when he pays this charge does not make it that. However, it may well be termed any one of these terms since, in effect, its only use is to enable the dealer in liquors to obtain his state license, and the payment of the fee is to provide the county with revenue.

As heretofore stated, the payment of the charge made by a county is a prerequisite to engaging in the liquor business, not only because of the rule of the Supervisor aforementioned, but also for this reason. This department ruled, in an opinion rendered to G. Logan Marr, Prosecuting Attorney of Morgan County, on August 28, 1935, that a person may be prosecuted for engaging in the liquor business without paying the charge or fee to the county. A conviction of this offense would have the effect of automatically revoking that person's state license under the provisions of Section 30, Laws of 1933, Ex. Sess. Acts, page 88. We are enclosing a copy of this opinion for your information.

Therefore, upon this question, it is the opinion of this department that although Section 25 of the Liquor Control Act does not provide that the county court issue any license when a dealer in liquors pays the county charge or fee, the county court may and should give the person something in the form of a receipt or permit as evidence so that that person may present the same to the State Department of Liquor Control when he applies for his state license.

II

> "Does the failure of the dealer to obtain a county license or pay the fee, as the case may be, come within the provisions of Section 26, Laws Missouri, 1927, constituting a violation of the provisions of the Liquor Control Act, so as to warrant the revoking or suspension of the license of the dealer by the Supervisor of Liquor Control?"

Concerning this question, we wish to state that the situation cannot now exist. On the 16th day of December, 1937, the Supervisor of Liquor Control promulgated the following rule:

> "All applicants for state permits must first obtain city and county permits."

Under this rule, no one will be able to obtain a state license without first having paid the charges made by

the county and submitting proof of such payment to the Supervisor. Consequently, no violation such as you point out can now exist. However, if such a condition does exist, due to the fact that the above rule is of a comparatively recent date, then the proper procedure to remedy such condition is to institute prosecution as pointed out in the opinion enclosed herewith.

In State ex rel. v. Dykeman, 153 Mo. App., l.c. 418, the court in speaking of the old dramshop laws, said:

> "A license to sell liquor is in no sense a contract with the state, but is a mere permit to do an act that would otherwise be unlawful, and is subject at all times to the police powers of the state government. The party receiving such a license takes it subject to all the provisions of the law relating thereto, and knows when he secures the license that it may be revoked at any time for the cause mentioned in the statute."

The causes mentioned in the statute for which a state liquor license may be revoked are found in Section 26, Laws of 1937, page 530, which provides that the Supervisor of Liquor Control may revoke or suspend a state license whenever he "has knowledge that a dealer licensed hereunder has not at all times kept an orderly place or house, or has violated any of the provisions of this act".

Under the ruling in the enclosed opinion, the failure or refusal to pay the county charge or fee is a violation of the law, and being such, Section 26, supra, provides that the Supervisor may revoke or suspend said license.

Therefore, it is the opinion of this department that a person now holding a state license who has not paid the charge or fee required by the county is subject to criminal prosecution, and also his state license may be revoked for his failure to pay the county charge or fee.

III

"May the County Court, by order of record, pay the salaries of State Liquor Inspectors and have those Liquor Inspectors be under the actual control of the Supervisor of Liquor Control and the activities of the Inspectors confined to enforcement of the Liquor Control Act in the counties wherein their salaries are paid by the County Court out of the general fund?"

The determination of this question depends entirely upon whether the statutes of this state give the county court the authority to act in this manner.

In Ray County ex rel. v. Bentley, 49 Mo., l.c. 242, it is said:

"The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. (Reardon v. St. Louis County, 36 Mo. 555.)

"The principle is well settled that a corporation can exercise only such powers and employ such agencies as its charter may permit. But counties have not the powers of corporations in general. They are merely quasi corporations, political divisions of the State, and they act in subordination to and as auxiliary to the State government."

In Sturgeon v. Hampton, 88 Mo., l.c. 213, it is further stated that:

> "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."

Keeping in mind that the county courts of this state are creatures solely of statutory origin and only have such authority as is expressly given by statute or necessarily implied therefrom, we do not find where the county court on any occasion can be said to be authorized to pay out of county revenue the salary of an employee of the Department of Liquor Control. Not being given this power, we must therefore conclude that such may not be done, although we are fully aware that if such could be done, it would aid greatly the enforcement of the liquor laws of this state.

Therefore, it is the opinion of this department that the action of the county court of St. Louis County in paying the salary of any employee of the Department of Liquor Control would be beyond the court's statutory authority and, consequently, void.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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