

✓ Beer: Cities of third class;-licensing vendors for an occupation tax.

8327 (Rev. 1917)

August 4, 1933.

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37

Hon. Elza Johnson,
City Attorney,
Carthage, Missouri.

Dear Mr. Johnson:

Your letter requesting an opinion from this office is in words and figures as follows:

"The Mayor of the City of Carthage has requested me to write you and ask your opinion on the question of whether a city of the third class in Missouri may license, tax, or regulate the manufacture, sale or transportation of beer containing not more than three and two-tenths per cent alcohol. And, if so, to what extent and under what regulations.

I shall greatly appreciate your giving an opinion on this question, and will consider it a personal favor."

Section 6840, R. S. Mo. 1929, as amended by the laws of 1931, page 277, in cities of the third class, provides in part as follows:

"The council shall have power and authority to levy and collect license tax * * * soft drink and ice cream stands and vendors *** and all other vocations and business whatsoever, and all other pursuing like occupations."

In the case of St. Charles ex rel. Palmer v. Schulte, 305 Mo. 124, l.c. 128, 264 S. W. 654, our Supreme Court held that the above section was constitutional and said further:

"St. Charles is a city of the third class. As such it was expressly authorized by Section 8322, Revised Statutes 1919, 'to levy and collect a license tax on . . . soft drinks and ice-cream stands and vendors.' That 'non-intoxicating near-beers or . . . beverages . . . manufactured wholly

Hon. Elza Johnson,

-3-

August 4, 1933.

or in part from malt or malt substitutes' are included within the term soft drinks is scarcely open to question. They are so included by popular acceptance, of which we take judicial notice, and they have been expressly classified as soft drinks by the Legislature itself in a subsequent act."

It is the opinion of this office that the city of Carthage is authorized, under the provisions of the above section, to pass an ordinance to levy and collect a license tax from any person, firm or corporation engaged in the business of selling beer or near-beer.

If this does not answer your question, we will be pleased to hear from you.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.