IN RE: Pool Halls; Requirement for license by County Court.

14372. R.S. Mo. 1929
15397 - R.S. Mo. 1939

March 11, 1933

FILED

Hon. A. P. Kelly,
Prosecuting Attorney,
Mercer County,
Princeton, Missouri.

Dear Sir:-

In your inquiry of February 13, 1933, directed to this office, you ask whether or not it is possible for a pool hall without a permit from the County Court to be operated as a club, in which a membership fee is collected to defray rent, wear and tear on the tables, etc. You then continue by saying that, in the instant case, as a matter of fact, there is no membership fee but that there is an understanding that the patrons of the hall shall "tip" the manager two and one-half cents per cue at the end of each game.

Section 14372, R. S. Mo. 1929 states:

> "COUNTY COURT TO LICENSE KEEPERS OF BILLIARD TABLES--The county courts 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, hereinbefore mentioned, as the respective courts shall direct, which shall be signed by the clerk and attested by the seal of the court."

The only exception to this is Section 14380, R. S. Mo. 1929:

> "EXCEPTIONS--This chapter shall not apply to any person having set up in his own private residence any one of such tables mentioned in section 14372, when used for his own private use, and for the use of his family, and upon which no charge is made for playing."

In the case of State v. Chotte, 130 S. W. 245, 143 Mo. A. 346, decided May 2nd, 1910 in the Kansas City Court of Appeals, the defendant was tried and convicted on an information charging him with having kept a billiard table without license. No charge was made, either directly or indirectly for the use of the billiard table. In affirming the conviction, Judge Broaddus held:

> "The fact that defendant made no charge to the patrons of his business as a merchant for the use of his table for playing games of billiards thereon was immaterial. It was permitting the playing of such games by defendant as the keeper of the tables without a license therefor tthat the statute comprehended. Had he been licensed as such keeper he would have been authorized to have chafged for the use of his tables or he could have permitted the use free of charge to his patrons although the statute is silent as to that matter. It was the business the Legislature had in view and not whether the licensee realized any profit from it, yet the presumption would be that no person would go to the expense of setting up and maintaining for use billiard tables, without he expected some compensation therefor."

This case has never been overruled and is, in our opinion, the law in Missouri today. While the statute is intended to regulate the business, it is also a revenue measure, and this fact should be kept in mind in interpreting the statute.

In the absence of Missouri cases directly deciding the point in reference to pool halls operating as clubs, decisions from other states may be illuminating.

In the case of State v. County Club, (Texas) 173 S.W. 570, syllabus No. 17:

> "Rev. St. 1911, art. 7355, sec. 8, levying an occupation tax on every pool or billiard table used for profit and providing that a table used in connection with any drinking saloon or other place of business where intoxicating liquors are sold or given away shall be regarded as used for profit, does not impose the tax on a bona fide incorporated social club, which maintains billiard tables in its clubhouse for the free use of its members and guests, since such clubhouse is not a saloon and, even though intoxicating liquors are sold therein, is not a "place of business", which in that statute means the place where one occupies his time and labor with a view of financial gain."

This decision cannot be regarded as controlling in Missouri, however because of the difference in the wording of the statutes. In fact the Court in the Texas case expressly said "keeping a billiard or pool table is not taxable unless it is used for profit". (Emphasis ours.). This is quite different from Section 14272, R. S. Mo. 1929.

The case of Union League v. Rendley 39 Pa. super. ct. 514, holding that a "social club is not required to pay a tax under the Act of May 25, 1907, P.L. 244, as a keeper of a billiard or pool room for purposes of profit" can be explained in the same manner as the

Texas case in that the statutes here also contemplated a billiard or pool room for purposes of profit.

Thecase of State ex rel. City of Friend v. Friend Recreation Club, 248 N. W. 876, 128 Neb. 740, is, however, in our opinion, directly in point. Judge Blockledge in that case held:

> "Cities of the second class have authority, under the provisions of Section 17-129, Comp. St. 1929, to enact ordinances to license, regulate or prohibit bowling alleys; and a bowling alley open to the public upon payment of a fee or charge is not exempt from the provisions of such ordinances because it is incorporated and operated under the name of guise of a "Recreation Club."

We conclude from the statement of the organization and operation of the club as here presented that it is palpably a devide to evade or avoid the requirementsfor a license and the regulatory provisions of the statute. It is the opinion of this office that unless a case came precisely within the exception provided for by Section 14080 R. S. No. 1929, keepers of billiard tables, pool halls and the like must be licensed by the County Court; and that the case presented to us by you does not come within the exception and that a license to operate is required.

We regret that we cannot give you a definite opinion as to the American Legion Hall, but you have not furnished us with sufficient facts upon which to base an opinion.

Very truly yours,

JOHN W. HOFFMAN, Jr.
Assistant Attorney General

JWH/mh

APPROVED:

ROY McKITTRICK
Attorney General