INTOXICATING LIQUORS: County Courts and Cities may charge lesser fees for licenses than is required to be paid under the Liquor Control Act. Cities cannot pass ordinances lessening the inhibited distance as provided in the Liquor Control Act.

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Mr. Benjamin H. Marbury
Assistant Prosecuting Attorney
Farmington, Missouri

Dear Sir:

This will acknowledge your request for an opinion which reads as follows:

> "The questions that I propose to ask you have come up before the County Court of this County, as well as the City of Farmington, which questions are as follows:
>
> May the County Court or the Board of Aldermen of the City of Farmington, under Section 44-a-14 as found on page 37 of the liquor law, which prohibits the sale of intoxicating liquors within 100 feet of any school, church or place where religious worship is had, be by the County Court or the City reduced below 100 feet, and further may the County Court of the City charge for a license either for malt liquors or 3.2% beer, less than is required by Section 22, page 18 of the liquor law, or must the County Court and the City charge as a minimum license fee the fee required paid to the State. In other words,is it required by the State Liquor Law that the County Court and the City must

charge the minimum fee for license both for malt liquor and 3.2% liquor, or may they go lower than the fee fixed for said sale in said County and City. I am aware that they may go one and one-half times the fee required by the State, but I am in doubt about whether or not they can go below the fee charged by the State; and as I understand it that the provisions of the liquor law both as to malt liquor and as to non-intoxicating liquor of 3.2%, that the State law governs and determines the fee to be fixed both by the County and the City.

These matters are coming up right away and I will appreciate a very prompt answer to this letter."

We are inclosing herewith copy of an opinion dated June 21, 1935, signed by the writer as Assistant Attorney General and approved by John W. Hoffman, Jr., Acting Attorney General. You will find that this opinion points out the general law and the statutes respecting what cities may do toward enacting ordinances not inconsistent with the general laws of the State.

We point to statutes which are applicable to the questions you have set forth in your letter.

Section 44a14 of the Liquor Control Act, provides as follows:

"No license shall be granted for the sale of intoxicating liquor, as defined in this act, within one hundred (100) feet of any school, church or other building regularly used as a place of religious worship, without the applicant for such license shall first obtain the consent in writing of the majority of the Board of Directors of such school, or the consent in writing of the majority of the managing board of such church or place of worship. The Board of Aldermen, City Council or other proper authorities, of any incorporated City,

> town or village, may by ordinance, prohibit the granting of a license for the sale of Intoxicating liquor within a distance as great as three hundred (300) feet. In such cases, and where such ordinance has been lawfully enacted, no license of any character shall issue in conflict with such ordinance while such ordinance is in effect."

You will note that the above section of the statute very clearly points out that no license shall be granted for the sale of intoxicating liquors within one hundred feet of any school, church or other building regularly used as a place of religious worship, without the applicant for such license having obtained the consent, in writing, of a majority of the board of directors of such school or managing board of such church or place of worship.

It is our opinion this inhibition would prohibit a city or county court from lessening the required distance as hereinabove set forth in Section 44a14, supra. You will further note that cities, or other proper authorities, may, by ordinance, prohibit the granting of a license for the sale of intoxicating liquor within a distance as great as three hundred feet.

Your attention is directed to the case of State ex rel. v. McCammon 111 M. A. 1. c. 631 et seq., wherein the court said

> "The powers conferred upon a municipal corporation must be exercised in conformity to the general laws of the State, unless it is clear that the exclusive control of the subject is given to the municipality, or that the general law is to be superseded or suspended by charter. A statute granting authority to a city to pass ordinances in relation to the liquor traffic, does not repeal the general laws on the subject. The rule is that the municipal ordinances cannot

set aside, limit or enlarge the statute law of the State, unless its power to do so can be shown in express terms or by necessary implication."

Section 25 of the Liquor Control Act provides 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 to the county court, or the corresponding authority in the City of St.Louis, as the case may be, shall by order of record determine,and shall pay into the treasury of the municipal corporation,wherein said premises are located, a license fee in such sum, (not exceeding one and one-half times the amount by this act required to be paid into the state treasury for such state permit or license), as the law-making body of s ch municipality, including the City of St.Louis may by ordinance determine. The Board of Aldermen, City Council or other proper authorities of incorporated cities, may charge for licenses issued to manufacturers, distillers, brewers, wholesalers and retailers of all intoxicating liquor, located within their limits, fix the amount to be charged for such license, subject to the limitations of this act, and provide for the collection thereof, make and enforce ordinances for the regulation and control of the sale of all intoxicating liquors within their limits, provide for penalties for the violation of

such ordinances, where not inconsistent with the provisions of this act."

It is evident, from a careful reading of the above section of the act, that the county court and proper authorities of incorporated cities, towns or villages may charge for licenses. The county court is restricted in the charge they may make for a license to a sum not in excess of the amount required to be paid into the state treasury. The city has been given the right to charge a fee in such sum not exceeding one and one-half times required by the act to be paid into the state treasury.

It is the opinion of this department, that the county court may charge a lesser amount than that which is required for the issuance of a license under the provisions of Section 22 of the act, which they shall, by order of record determine, but that it shall not exceed the amount that is required to be paid into the state treasury. We further rule that Boards of Aldermen, City Councils or other proper authorities of incorporated cities may charge for licenses and fix the amount to be charged for such licenses, which charge may be less than the amount which is required under the provisions of Section 22, supra, but that such fee shall not be in excess of one and one-half times required to be paid into the state treasury for such state permit or license.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney General

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