

POOL, BILLIARD AND OTHER TABLES: Construction of cert in sections contained in Chapter 135, with reference to issuing license.

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Honorable J. P. Smith
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Dear Sir:

We have your opinion request of recent date, which request reads as follows:

"In regard to pool tables which come as I understand under Chapter 135, R.S. Mo. 1939, on pages 3900 & 3901.

"There has been a party here that bought a Pool Hall, run it a short time and sold it, had no license, and he bought another Pool Hall and has not paid any license, and the matter was called to my attention, and he said that there had been license bought by the former owner, or the Pool Hall, and they had not expired, and that he thought that he could run on them until they were out.

"I told him that I thought the license was not transferable and that he should have license issued to him direct, and that he could not operate on the license of the former owner. Am I right or wrong? Let me have your opinion on this question.

"He operated the first Pool Hall he bought about 4 or 5 months till he sold it, and the second one he is operating now he bought in June or July, and has sold it, to deliver it to the purchaser on October 1st, 1944.

"Sec. 15389, R.S. Mo. 1939, license to be issued for twelve months. He wants to pay

for just the time he operated the last one. Each of them had unexpired license issued to former owner, and the time of the license had not expired. My version of the law that the license is not transferable, and must be issued for twelve months in the name of the owner and operator and not just for the time that he may stay in business. Am I right or am I wrong? Let me have your opinion on this point, also."

Section 15397, Revised Statutes of Missouri 1939, reads as follows:

"The county court 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."

Section 15398, Revised Statutes of Missouri 1939, provides as follows:

"The collector shall deliver to any person who shall have been licensed, a license to keep any such table mentioned in the next preceding section in their respective counties, for a term of twelve months, upon the payment by the applicant of the sum of twenty dollars for each billiard table, and ten dollars for each other table described in said section, and the collector shall countersign such license before delivering the same to the applicant; Provided, that if the applicant be the keeper of more than one of such tables, the number may be named in one license, and in such case the clerk shall not be entitled to more than one fee as provided in section 15401."

Section 15399, Revised Statutes of Missouri 1939, reads as follows:

"No county court, city or town authorities shall levy a greater amount for a license tax on any table mentioned in section 15397, for county, city or town purposes, than is allowed for state purposes."

In the case of State ex rel. Hawkins v. Harris, 304 Mo. 309, 263 S.W. 807, 1.c. 810, the court said:

" * * * * It is not necessary in this case to undertake to define with precision the powers thus conferred upon these classes of municipalities. The reference is made as to a matter indicative of the legislative policy of the state. In view of that, and of the prior holdings of this court, the conclusion is reached that the granting of such a license is the conferring of a privilege, not the granting of a right; that it is within the sound discretion of the county court to confer or to withhold the privilege, and that this discretion cannot be revised or controlled by a court of superintending control by writ of mandamus, and the writ should be denied herein."

It will be noted from the reading of the above excerpt and ruling of the court in the Harris case, supra, that the granting of the license by the county court is the conferring of a privilege, and not the granting of a right, and that such county court has the sound discretion to confer such privilege or to withhold such privilege as it may see fit.

In the case of Ragan v. McCoy, 29 Mo. 356, 1.c. 368, the court, with reference to a license to run a ferry, said:

" * * * * The right to keep a ferry is a personal privilege sold to the person obtaining the license, and is not transferable. * * * *"

The following will be noted from reading 37 Corpus Juris 245, Sec. 107:

"Unless a transfer is permitted by the license statute or ordinance, a license is generally regarded as a special

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privilege of personal trust and confidence which cannot be assigned or transferred without the consent of the licensing authorities, * * * *."

From the reading of Chapter 135, Revised Statutes of Missouri 1939, it will be noted that the Legislature has not made licenses issued by the county court transferable, therefore the rule is controlling as laid down in the McCoy case, supra, and likewise in Corpus Juris, supra.

Turning to your question of whether or not the license may be issued for a shorter period of time than 12 months, it will be noted from the reading of Section 15397, supra, that the county court shall deliver to the county collector as many blank licenses for issuance to keepers of such tables heretofore mentioned as the respective court shall direct.

When the county court makes its order of record that a person shall be licensed as a keeper of tables, as contemplated by Chapter 135, Revised Statutes of Missouri 1939, then Section 15398, supra, provides that the collector shall deliver to the person whom the county court has licensed under the provisions of Section 15397, supra, such licenses upon the payment by such person of the sum of \$20.00 for each billiard table and \$10.00 for each other table described in Section 15397, supra, and that such license shall be for a term of 12 months.

Upon the reading of Section 15399, supra, it will be noted that this section interprets Section 15398, supra, and provides that the amounts set out in Section 15398, supra, are the sums of money that go to the State as a state tax. Section 15399, supra, further provides that the county, city or town authorities shall not have authority to levy a greater amount for a license tax.

It is our view that under the rule of statutory construction laid down in the case of Keane v. Strodman, 323 Mo. 161, 18 S.W. (2d) 896, l.c. 898, the county court would not have the right to license for a lesser term than the 12 month period prescribed in Section 15398, supra.. In the above case the court said:

"Certainly where, as at bar, the statute (section 8702) limits the doing of a particular thing to a prescribed manner, it necessarily

includes in the power granted the negative that it cannot be otherwise done. This is the general rule as to the application of the maxim. Even more relevant under the facts in this case is the interpretation given to it by the Kansas City Court of Appeals in *Dougherty v. Excelsior Springs*, 110 Mo. App. 623, 626, 75 S.W. 112, 113, to this effect: "That when special powers are conferred, or where a special method is prescribed for the exercise and execution of a power, that exercise is 'within the provision of the maxim * * * and * * * forbids and renders nugatory the doing of the thing specified except in the particular way pointed out.'"

It is further our view that should the holder of a license be precluded for any reason from operating his table or tables for a shorter period of time than 12 months, he would not be entitled to a refund of any of the money so paid either to the state, county, city or town authorities as a matter of right, for the reason that, as has heretofore been pointed out, he merely has a privilege to operate said tables by virtue of the discretion placed in the county court to grant such license.

There is contained no statute in Section 135, Revised Statutes of Missouri 1939, which gives the county court the authority to refund any moneys so paid to the licensee. Neither is there contained a statute which allows the county court to issue such license by express provision for a lesser time than 12 months, and under authority of the *Keane v. Strotzman* case, supra, the Legislature has prescribed a certain way for the issuing of the license and through the rule of statutory construction so stated in this case it necessarily follows that any other method is excluded. However, under Section 15399, supra, the county court would have a right to levy any amount of tax, so long as it did not exceed the sum of \$20.00 for each billiard table and \$10.00 for each other table described in Section 15397, supra, for a 12 month period.

CONCLUSION.

It is the opinion of this department that:

(1) The granting of a license to operate pool, billiard and other tables designated in Chapter 135, Revised Statutes

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of Missouri 1939, is the conferring of a privilege, and not the granting of a right.

(2) That the county court has the sound discretion to confer or withhold such privilege.

(3) That a license once granted is not transferable.

(4) That such license cannot be given for a shorter period of time in the first instance than 12 months.

(5) That, if for any reason such person is precluded from operating such tables described in the license for the full term of 12 months, he is not entitled to a rebate for that portion of the time which he did not operate such tables, as a matter of statutory right.

Respectfully submitted,

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APPROVED:

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