

LIQUOR LICENSE: County Court is not authorized to return license fee paid into county treasury after vacation of premises or abandonment of business by licensee.

January 20, 1944



Honorable G. Logan Marr
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Dear Mr. Marr:

This is an acknowledgment of your request to the General, for an official opinion, which is as follows:

"The wartime scarcity of alcohol beverages, such as whiskey, has forced many liquor places out of business. Many have been unable to get any kind of liquor to sell. Because of this drought, they have decided that they are out of business. There has been several requests presented to the county court about a refund of liquor license tax that has been paid to the county court, for the operation of a liquor place in Morgan County, Mo. One says she was able to operate only two months, and that she is entitled to a refund for at least six months of her total license paid. Another takes the position that she is entitled to half, back because, he closed the package liquor department, about five months after the year as of July 1, started.

"Is there any law or statute that makes it mandatory on the county court to make a refund on the licenses? Sometimes those current income is held for the budget of the next year. Many times, part of the income goes to the special road districts as per the statutes. Sometimes in the reallocating of the budget figures in November, part of this current revenue is used up to pay current accounts in certain classes."

Section 4898, R. S. Mo., 1939, provides in part as follows:

"No person, partnership, association of persons or corporation shall manufacture, distill, blend, sell or offer for sale intoxicating liquor within this state at wholesale or retail, or solicit orders for the sale of intoxicating liquor within this state without procuring a license from the Supervisor of Liquor Control authorizing them so to do. For such license there shall be paid to and collected by the Supervisor of Liquor Control annual charges.***"

Thereafter such section fixes the amounts to be paid as license for manufacturing and selling intoxicating liquor.

Section 4904 thereof 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, 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 such municipality, including the City of St. Louis may by ordinance determine.***" (Underscoring ours.)

The county court, under such statute, is authorized to charge a dealer in intoxicating liquors a certain fee or sum. This is to be done by an order of record. The payment of such fee or sum is a prerequisite to engaging in the business of selling liquor in the county.

In State ex rel v. Jackson, 84 S. W. (2d) 988,989 (Mo.App.) the court in speaking of county courts and their powers, said:

"***Such court is a creature of the Constitution, and its powers are limited by the terms of the various statutes defining its powers. It has no common-law or equitable jurisdiction.***"

The fee provided in such liquor act, as it pertains to counties, is a revenue measure. We assume that the fee so paid into the county treasury was voluntarily paid without protest.

In C. J. page 571, Section 178, it is said:

"Where a person applying for a liquor license voluntarily pays the whole amount demanded of him, although the charge is illegal, or the amount demanded, in consequence of a misapprehension of the law, or of the invalidity of a particular statute or ordinance, is in excess of the sum which might lawfully be exacted, he cannot recover back the amount paid or the illegal excess. But the rule is otherwise where the payment was not voluntary, but

was obtained by extortion, fraud, force or moral or legal compulsion, as in such a case he may recover back the amount or the illegal excess. Where a licensee is deprived of his license by acts or circumstances over which he has no control and without his volition, he can recover the unused portion of his license fee or tax, But this rule has no application where the licensee retains his license and voluntarily vacates his place of business, thus rendering his license ineffective owing to his own act in withdrawing from the premises.***"
(Underscoring ours.)

The Supreme Court in the case of Neumer v. Jackson County, 271 Mo. 594, 600, held:

"***In order to recover from a municipal corporation a tax or fee paid to it involuntarily and under protest, one of the essential prerequisites (among others), of the right of recovery, absent a statutory rule to the contrary, is, that it must appear that the tax or fee was illegal. (4 Dillon on Municipal Corporations (5 Ed.) sec. 1617; American Union Express Co. v. St. Joseph, 66 Mo. 675, l. c. 683.)***"

It is true that in some jurisdictions - but not in Missouri - provision is made by statute for refunding or rebating, in certain cases, money paid for liquor licenses or taxes but the general rule seems to be that, absent such statutory authority, a county court would not be invested with authority to make such refund.

Therefore, it is the opinion of this department that county courts are not authorized to refund or rebate a liquor license nor any part thereof to a licensee who

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voluntarily vacates his place of business or abandons
such business.

Respectfully submitted

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APPROVED

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