

LIQUOR CONTROL: County court not authorized to return fee paid county by applicant when applicant's application for state license is afterwards refused.

July 11, 1938

Hon. Merrill E. Montgomery
Prosecuting Attorney
Sullivan County
Milan, Missouri



Dear Sir:

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

"Our County Court have usually issued permits to sell either hard liquor or malt liquor whenever the applicant obtained a license from the State. By order of record our Court has fixed County License fees at \$35.00 for a five per cent beer license and \$50.00 for package liquor or hard liquor vendors.

"Recently an applicant for a five per cent beer permit wished to renew his license, he advised the County Court that he had been advised that his application for renewal of his State License had been granted. Thereupon he deposited \$35.00 with the County Clerk who issued him a County License. Sometime later he was advised that his application for renewal of his state license had been denied and he was unable to secure a State License. Thereafter he applied to the County Court for a refund of his \$35.00 theretofore deposited for County License.

"The County Court would like to know if they, under the law, are empowered to refund this money to the applicant after the same has been paid and County License duly issued?"

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In an opinion rendered by this department on February 14, 1938, to George E. Heneghan, St. Louis County Counselor, we passed on the proposition of whether the county court has authority to issue a liquor license to a dealer or whether the county court is confined to the mere collection of a fee, in the sum permitted, as the court may by order of record determine. We said in this opinion:

"Section 25, Laws of 1935, page 276, 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.'

It is true, as you have stated in the body of your letter, the repeal of Section 24, Laws of 1933, Ex. Sess. Acts, page 77, and the enactment of Section 25, supra, has made the provisions of Section 25, supra, confusing as to whether or not the county courts of this state may now issue a license or only collect a fee for the privilege of selling liquors within a county.

The section itself at no time refers to a license to be issued, but we think the reasonable interpretation to be given the provisions of this section is as follows:

The county court is authorized to charge such dealer in liquors a certain sum. This is to be done by an order of record.

The payment of this sum is a prerequisite to engaging in the business of selling liquors in the county, (as we shall illustrate later). This being true, it is necessary that the person paying said sum to the county receive something as evidence that he has complied with Section 25, supra, and the order of the court made pursuant thereto. The necessity of a person having something as evidence that he has paid the county charge is illustrated by reference to a ruling of the Supervisor of Liquor Control to the effect that each applicant for a state license must, before said state license is issued, submit proof that he has paid the charges made by counties or cities of this state. This evidence, we think, may be in the form of a receipt, permit, license or a certified copy of the order of the county court concerning said liquor dealer, showing payment by him of the charge fixed by the court. It may also be, we think, by any other means which will effectuate the rule above referred to.

The mere application of one of the above terms to the evidence given by the Court to the dealer when he pays this charge does not make it that. However, it may well be termed any one of these terms since, in effect, its only use is to enable the dealer in liquors to obtain his state license, and the payment of the fee is to provide the county with revenue.

As heretofore stated, the payment of the charge made by a county is a prerequisite to engaging in the liquor business, not only because of the rule of the Supervisor aforementioned, but also for this reason. This department ruled, in an opinion rendered to G. Logan Marr, Prosecuting Attorney of Morgan County, on August 28,

1935, that a person may be prosecuted for engaging in the liquor business without paying the charge or fee to the county. A conviction of this offense would have the effect of automatically revoking that person's state license under the provisions of Section 30, Laws of 1933, Ex. Sess. Acts, page 88.

Therefore, upon this question, it is the opinion of this department that although Section 25 of the Liquor Control Act does not provide that the county court issue any license when a dealer in liquors pays the county charge or fee, the county court may and should give the person something in the form of a receipt or permit as evidence so that that person may present the same to the State Department of Liquor Control when he applies for his state license."

The above, we think, amply illustrates that the liquor laws of the state only permit the collection of certain fees and is a revenue in so far as the county is concerned.

In State ex rel. v. Jackson, 84 S.W. 2nd 988 (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."

With this rule of law in mind, and treating the liquor act as it pertains to counties as a revenue measure only, we proceed to this question. Has the county court authority to return the fee paid in under these circumstances?

We assume the fee paid the county court was voluntarily paid without protest, but even though it was not, under the ruling in Neumer v. Jackson County, 271 Mo. 594,

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the applicant is still not entitled to have the fee returned. In this case, it is said at l.c. 600:

"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 to recovery, is, that it must appear that the tax or fee was illegal."

The fee charged here is legal. Section 25, Laws of 1935, page 276, permits the county court, by order of record, to fix and determine the amount to be paid by a liquor licensee at any sum not in excess of the amount required to be paid by the licensee into the State Treasury for the state permit. The fee required of an intoxicating malt liquor dealer for consumption on the premises is \$35.00 (Section 22, Laws of 1935, page 274), and that is the amount the county court charged and was entitled to receive from this applicant.

In 33 C.J., page 571, Section 179, it is stated:

"As a general rule a person who has paid the fee for a liquor license on making his application therefor cannot recover it back upon the subsequent refusal of the license, in consequence of his failure to comply with other conditions, or for other sufficient reasons."

The presumption is that the Supervisor of Liquor Control had sufficient reasons for refusing this applicant a state license and was authorized to do so.

A number of the authorities reviewed in the Corpus Juris citation above hold that such a refund may be made if the statute contemplates and authorizes it. This brings us back to what is said in State ex rel. v. Jackson, supra. A study of the statutes pertaining to the regulation and control of intoxicating liquors reveals no such authority, and without statutory authority, the county court cannot act.

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Section 9981, R.S. Missouri, 1929, authorizes county courts to refund moneys collected under an illegal levy, but this section does not apply because the fee was legally determined and collected.

CONCLUSION

Therefore, it is the opinion of this department that the county courts are not authorized to refund to an applicant for a state liquor license the fee paid by him to the county, when his application for the state license is subsequently denied.

Respectfully submitted,

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APPROVED By:

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