

LIQUOR LICENSE: One who obtains license which permits intoxicating liquor to be consumed on his premises is subject to pay fee fixed by county court within limits fixed by law, and may be prosecuted for failure to do so.

January 24, 1950 12-50

Honorable D. R. Jennings
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri



Dear Sir:

This department is in receipt of your recent request for an official opinion upon the following:

"Request advice as to whether or not County Courts in Counties of the Third Class may require persons who hold a license under Sec. 4895a R. S. Mo. A., Laws of Mo. 1945, p. 1033, (commonly called 'set-up Licenses'), to pay a license fee into the County Treasury.

"Section 4904 R S Mo A states in part: '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, * * *, 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 * * * shall by order of record determine, * * *.'

"I am unable to find anything in said Sec. 4895a that prevents Sec. 4904 from applying.

"Further, if the county court has such authority will the provisions of Sec. 4933, R. S. Mo A apply for failure to pay such county license fee?"

The pertinent part of Laws of Missouri, 1945, page 1042, (Section 4895a), states:

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"It shall be unlawful for any person operating any premises where food, beverages or entertainment are sold or provided for compensation, who does not possess a license for the sale of intoxicating liquor, to permit the drinking or consumption of intoxicating liquor in, on or about said premises between ten o'clock P.M. and six o'clock A.M. the following day without having a license as in this section provided.

"Application for such license shall be made to the Supervisor of Liquor Control on forms to be prescribed by him, describing the premises to be licensed and giving all other reasonable information required by the form. The license shall be issued upon the payment of the fee required herein. A license shall be required for each separate premises and shall expire on the 30th day of June next succeeding the date of such license. The license fee shall be \$60.00 per year and the applicant shall pay \$5.00 for each month or part thereof remaining from the date of the license to the next succeeding 1st of July. Applications for renewals of licenses shall be filed on or before the 1st of May of each year.

"The drinking or consumption of intoxicating liquor shall not be permitted in, upon or about the licensed premises by any person under twenty-one years of age, or by any other person between the hours of 1:30 A.M. and 6:00 A.M. on any week day, and between the hours of 12 o'clock midnight Saturday and 12 o'clock midnight Sunday, or on the day of any general, special, or primary election in this state, or upon any county, township, city, town, or municipal election day during the hours the polls are legally open. Licenses issued hereunder shall be conditioned upon the observance of the provisions of this Act and the regulations promulgated thereunder governing the conduct of premises licensed for the sale of intoxicating liquor by the drink. The provision of this section regulating the drinking or consumption of intoxicating liquor between certain hours and on Election day and Sunday shall apply to premises licensed under this Act to sell intoxicating liquor by the drink. In any incorporated city having a population of more than twenty thousand (20,000) inhabitants, the Board of Aldermen, City Council, or other proper authorities of incorporated cities may, in addition to the

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license fee herein required, require a license not exceeding Three hundred dollars (\$300.00) per annum, payable to said incorporated cities, and provide for the collection thereof; make and enforce ordinances regulating the hours of consumption of intoxicating liquors on premises licensed hereunder, not inconsistent with the other provisions of this law, and provide penalties for the violation thereof.

* * *

"Any premises operated in violation of the provisions of this section or where intoxicating liquor is consumed in violation of this section, is hereby declared to be a public and common nuisance and it shall be the duty of the Supervisor of Liquor Control and of the Prosecuting or Circuit Attorney of the City of St. Louis, and the Prosecuting Attorney of the county in which the premises are located to enjoin such nuisance.

"Any person operating any premises, or any employee, agent, representative, partner or associate of such person, who shall knowingly violate any of the provisions of this section, or any of the laws or regulations herein made applicable to the conduct of such premises, shall, upon conviction, be deemed guilty of a misdemeanor."

* * * * *

Section 4904, R. S. Mo., 1939, reads:

"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

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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."

In the case of State v. Skinner, 119 S.W.(2d) 82, the court said:

"We think there is no merit to the above assignment for under the provision of Section 25, Laws of Missouri, 1935, page 276, Mo. St. Ann. Sec. 4525g--29, p. 4689, (Sec. 4904) counties are authorized to charge for licenses and may issue a license upon the payment of such charges. Section 43 on page 282, Laws of Missouri, 1935, Mo. St. Ann. Sec. 4525g--48, p. 4689, (Sec. 4933) provides a penalty for violating said act. It was not error to refuse to quash the information."

In view of what appears to us to be the plain meaning and intent of Section 4904, and in further view of its construction in the Skinner case quoted above, it is our conclusion that one who obtains a liquor license under Section 4895a, may be taxed by a county within the limits of and under Section 4904, and that for failure to pay into the county treasury the fee fixed by the county court under Section 4904 prosecution may be instituted under Section 4933.

CONCLUSION

One who obtains a liquor license under Laws of Missouri, 1945, page 1032 (Section 4895a) may be taxed by a county within the limits of and under Section 4904, and for failure to pay into the county treasury the fee fixed by the county court under Section 4904 may be prosecuted under Section 4933.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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