

License, Legality Of. Illegal License. State Board of Examiners Must Audit Claims for Refund of License Paid to State. Appropriation Necessary to Refund License Paid to State.

1. Chap. LVI, Laws 1903, relating to licenses, is unconstitutional.

2. The refunding of licenses collected under such law, where judgment has not been obtained, rests in the discretion of the county authorities.

3. The portion of said license paid to the state treasurer can only be refunded after auditing by the state board of examiners by appropriation made by the legislature.

Helena, Montana, March 17, 1908.

Hon. Harry L. Wilson,  
County Attorney,  
Billings, Montana.

Dear Sir:—

Your letter of March 4th, relative to license collected by your county from Bailey-Carney Buggy Company has been received. You state therein that your county has refunded to this company the sum of \$350.00, a portion of the total license of \$500.00 which has been received by your county; the remaining \$150.00 having been theretofore turned over to the state, and that this company now threatens suit unless the county pays over the other \$150.00.

On November 9, 1907, this office addressed you a letter in which it was stated that the provisions of Chapter LVI, Laws 1903, under which this license was collected, was probably unconstitutional and void, and that the district judge Cheadle had so held the law in *State vs. Hodgen; Bacon vs. Locke* 83 Pac. (Wash.) 721, and the cases therein referred to were cited as an authority for the proposition that the law would probably be held void by our supreme court, and the proposition of refunding

to the company the amount of license paid was submitted to the judgment of the county authorities. I am still of the opinion that this law will be held unconstitutional:

First: Because it is a revenue measure originating in the Senate.

Second: Because under the Federal decisions it is an unjust discrimination.

But the question of refunding the \$150.00 which you have already transmitted to the state is one which must be left to your judgment and that of the commissioners, for there may be circumstances attending this matter such as defective protest, or delay in bringing suit, that in your judgment would justify withholding this money until the company had litigated the matter in court. The only case we have been able to find bearing upon the statute of limitations in actions of this kind is Centennial Eureka Mining Company vs. Juab County, 62 Pac. (Utah) 1024, where the supreme court of Utah held that the provision of their code similar to our Section 518 Code Civil Procedure applied.

If the county refunds these taxes to the company it can submit its claim to the state board of examiners who will transmit it to the legislature for action with reference to making an appropriation, for it will require an act of the legislature before the state treasurer will be authorized to refund the money to the county.

Very truly yours,

ALBERT J. GALEN,

Attorney General.