

Saloon License, Unexpired Portion of. Refund, of unexpired portion of Liquor License. County Treasurer, Duty of Under Chapter 87, Laws of 1915. Liquor License, Revocation of by Law.

Laws of 1915, Chapter 87, providing that the county treasurer shall refund the unexpired portion of saloon licenses revoked by operation of law, applies only to the portion of the license retained by the county.

County treasurers must account to the state at the times required by law and whenever called upon to do so, and may not deduct from his remittance any sum due the state.

January 26, 1916.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

Dear Sir:

Under even date you transmitted to this office for consideration, the following proposition:

"Your opinion is desired as to whether the county treasurer has the authority to refund the state's portion of a license once remitted to the state, by the operation of deducting said refund from a subsequent monthly remittance made the state treasurer."

I assume the purpose of your inquiry is to have defined the rights, powers, and duties of the county treasurer under Chapter 87, Laws of 1915, respecting the refund provided for in cases where saloon licenses expired by limitation of law on the 31st day of December, 1915. Where such licenses did expire, the law provides "that the county treasurer shall refund the unexpired portion of such license bearing an expiration date later than December 31st, 1915."

It has been held, and I think it is settled law in this state, that a saloon license is a mere permit, revokable at the will of the licensing power, without providing for any refund whatever to the licensee, and that affirmative legislation is necessary to authorize a refund. With this principle in mind, an examination of the law above quoted discloses that the refund provided for can be held to refer to such portion only of the license fee collected which the county is by law entitled to hold, as distinguished from that portion which goes to the state (Sec. 2756, R. C.). When moneys have once been paid into the state treasury, they may be withdrawn only upon appropriations made by law, and on warrants drawn by the proper officers in pursuance thereof, except interest on the public debt (Const., Art. V, Sec. 34). There is no authority whatever, for the county treasurer to withhold, or deduct from his remittances to the state treasurer any sums due the state. On the contrary he must pay over all money in his possession belonging to the state at the times required by law, or when ordered to do so (Sec. 2715 et seq., R. C.). The refund provided, is, therefore, only of the county's portion of the license fees, and refunds should be made only upon claims presented to and allowed by the Board of County Commissioners.

Yours very truly,
J. B. POINDEXTER,
Attorney General.