

**Billiard Tables—License Tax—Validity of Town Ordinance.**

The legality of a license tax upon billiard-tables imposed by city ordinance depends upon whether the tax is necessary for regulatory purposes. If the amount raised by means of the license is reasonably necessary for regulatory purposes and is in fact expended for regulatory purposes, then the ordinance imposing the license fee is valid.

Elbert Allen, Esq.,  
County Attorney,  
Livingston, Montana.

My dear Mr. Allen:

You have submitted a copy of the ordinance passed by the town of Clyde Park relating to license fees, with a request for my opinion as to the legality of same, with reference especially to the ordinance relating to pool and billiard tables.

The question of the legality of such ordinances has been passed upon by our Supreme Court in the case of *Reilly v. Hathaway*, 46 Mont. 1, and *Johnson v. Great Falls*, 38 Mont. 369. The conclusion of these decisions is that license fees may be assessed and collected by cities and towns for regulatory purposes only, and not for revenue.

In *Reilly v. Hathaway*, 46 Mont., at page 9, the Supreme Court, after reviewing the evidence in regard to the amount of money expended for regulatory and inspection purposes, used the following language:

“This court held, in *Johnson v. City of Great Falls*, 38 Mont. 369, 16 Ann. Cas. 974, 99 Pac. 1059, that while the legislature may not confer upon cities and towns the right to impose a license tax upon professions and occupations for the purpose of raising revenue, it may, in the absence of constitutional limitation, authorize them to impose such a tax in aid of police regulations. Ordinance No. 85 of the city of Missoula ostensibly and presumptively imposes a license tax upon the business or occupation of the appellant in the exercise of the police power of the municipality. On its face

this ordinance appears to be valid. But of course the city cannot do by indirection what it is not permitted to do directly. If this license tax was in fact imposed for purely revenue purposes and not for regulation, its collection was an illegal act. The evidence heretofore quoted discloses to our minds, beyond question, that as a police regulation the ordinance is a dead letter upon the ordinance book. Apparently no attempt was made to regulate, supervise, or inspect the grocery business of the appellant. It is impossible to escape the conclusion that the tax was collected for purely revenue purposes. The money was paid into the general fund of the city and used to pay its general operating expenses. Approximately 800 licenses and receipts were issued annually at an expense for printing of about \$24. No extra expense was incurred on account of salaries of the city clerk and city treasurer. In fact, the entire expense to the city grew out of the collection of these same license taxes, and were it not for such collections the city would have been at no expense whatever. We shall not stop to inquire on whom the burden of proof rests. It may be presumed, we think, that the two city officers who were sworn as witnesses would have some knowledge as to whether the business of the plaintiff was in fact subjected to police regulation. Both declared that, so far as they knew, nothing of the kind was ever attempted. The respondents offered no evidence. Under these circumstances we are inclined to the opinion that the appellant made a prima facie showing that the tax paid by him under protest was collected for the purpose of raising revenue solely, and was therefore illegal."

From this decision it is apparent that the amount of the license fee must be related to the actual cost of expenditures for regulatory purposes.

Section 3259 of the Revised Codes of 1907, Subdivision 3, limits the amount that may be required as a license fee to not exceeding the sum required by the State law when the State law requires a license therefor. The license fee for billiard tables of \$3.50 prescribed by the ordinance does not seem to be in conflict with this provision.

From the foregoing decisions the question whether the expenditure is actually necessary and is made for regulatory purposes determines the legality of the license fee. The number of police officers necessary, the number of inspections made, the supervision required and all of the matters involving expenditure for the purpose of regulating places licensed would enter into this question. If the amount raised by means of these licenses is reasonably necessary for regulatory purposes and is in fact expended for the same, then the license fees in question are valid under the decisions above referred to.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.