

Opinion No. 295**Licenses—Refunds—Fees—Wholesalers.**

HELD: In the absence of statute a license fee paid to state may not be refunded where the license is legal and is paid voluntary without protest, and where the failure to furnish the required bond for license was no fault of the state but wholly the fault of the licensee.

August 9, 1933.

You have submitted the following: "Referring to Chapter 164 of the 1933 Session Laws we have in several cases received applications accompanied by the proper fees and have, in order not to work a hardship on anyone, allowed the applicant to continue business pending the filing of the bond and the issuing of the license. Later, the applicant has been unable to furnish the bond and is asking for a refund of the fee. Are we permitted to do this, especially in view of the fact that the party transacted business for some time after filing the application."

I find no statute in Montana authorizing the refunding of license fees except where they are paid under protest as provided in Section 2409, R. C. M. 1921. In *Roberts et al. v. City of Boise*, 132 Pac. 306, where the cases are reviewed, it was said: "The general rule recognized by the authorities is that 'A license tax voluntarily paid cannot be recovered back unless there is a statute which expressly authorizes such recovery.' 3 McQuillin, *Munic. Corp.*, Sec. 1009; 1 *Woollen & Thornton on Intox. Liquors*, Sec. 497; *Joyce, Intox. Liquors*, Sec. 330."

The collection of the license fee provided in Chapter 164 was legal. The payment thereof was voluntary. The failure to furnish the required bond was not through any fault of the state but was wholly due to the failure of the licensee. "Where the fee or tax which has been paid was not illegal or unauthorized it cannot be recovered back, irrespective of whether its payment was voluntary or involuntary, and although the method of its collection was irregular. * * * A sum deposited with an application for a license may be recovered on the failure or refusal to issue a license, without any fault

on the part of the applicant." 37 C. J. 255. (See also *Brush v. City of Helena*, 54 Mont. 254, 169 Pac. 285; 3 McQuillin, *Munic. Corp.* 1009, Note: Volume 6 Opinion of Attorney General, p. 286.)

It is therefore my opinion that a license fee paid under the circumstances above mentioned, the same being legal, paid voluntarily without protest, and the failure to furnish the required bond for license being no fault of the state but wholly the fault of the licensee, there can be no recovery of the license fee.