

commissioners may provide for licenses not to exceed a sum equal to fifty per cent of the license collected by the board under this act?

2. If the county is entitled to all the moneys collected from retail liquor licenses, to what funds should these moneys be distributed?"

Our views upon the questions submitted are in agreement with your opinion.

Section 4 of Chapter 84, of the 1937 Session Laws, establishes a license fee for the various classes of liquor establishments. The fees from the licenses provided for in section 4 go entirely to the state.

Section 28 of the act provides:

"The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a license has been issued under the provisions of this act, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the board from such licensee under this act."

Section 28 leaves it within the discretion of the city council, or the county commissioners, to license these liquor establishments. It is not mandatory upon either the city or the county to impose these licenses. If the city or county were not to receive this money for their own use there would be no direct incentive for them to license these establishments. We are inclined to believe that if the city or county did not receive these funds there would be a considerable number of the counties, and many of the cities, that would not levy the licenses, and in such event the state would not receive any revenue from this particular class of license.

Section 29 provides:

"All receipts from license fees, fines and penalties collected under the provisions of this act shall be paid to the state treasurer and by him apportioned and allocated as follows: Fifty per cent (50%) to the state public school general fund and fifty per cent (50%) to the public wel-

Opinion No. 112.

Licenses—Liquor License—Cities and Towns—Counties.

HELD: License money collected by county from liquor dealers is paid into general fund of county, and that collected by city into city general fund.

June 14, 1937.

Mr. Harold K. Anderson
County Attorney
Helena, Montana

Dear Sir:

You have submitted to this office a copy of your opinion rendered to your county treasurer upon the following two questions:

"1. Is the county entitled to all of the money collected on retail liquor licenses collected and levied pursuant to Section 28, Chapter 84 of the Laws of 1937, which provides that county

fare fund for the administration of the social security laws.”

It is the view of this office that Section 29 has reference to the license fees provided for in section 4 of the act, not Section 28. We believe that it was the intention of the legislature that cities and counties should have access to this revenue. A duty is imposed upon both the city and county to regulate and police these establishments, and no doubt some extra expense is necessitated. It is only reasonable to assume that the legislature intended that the revenue from these licenses, issued by the cities and counties, should be utilized to defray that extra expense. Inasmuch as the law makes no provision for the distribution of the moneys from these license fees, collected by the cities and counties, it necessarily follows that the fees should be placed in the general fund. Therefore, it is my opinion, in concurring with your said opinion, that the cities and counties may retain the license fees they collect from licensing retail liquor establishments in their respective cities or counties, and that the fees should be deposited in the general fund of the county or city.