

a population of less than 2000, is \$200.00.

2. Excess license fees collected may be refunded by the Liquor Control Board out of any license fees, fines and penalties thereafter collected under the provisions of Chapter 84, before the same are deposited with the State Treasurer.

October 7, 1937.

Montana Liquor Control Board
Helena, Montana

Gentlemen:

You have submitted for my opinion, the following state of facts:

You state that you have charged and received a license fee of \$600 for liquor licenses to operate within unincorporated villages with a population of less than 2000 people. Your inquiry is as to the proper fee to be charged, and if said fee charged and collected is in excess of that provided by law, what authority, if any, has the Board to make a refund of such excess?

Section 4 of Chapter 84 of the 1937 Session Laws provides:

“For each license in cities with a population of ten thousand (10,000) or more and within a distance of five (5) miles thereof, outside of an incorporated city or town, six hundred dollars (\$600.00) per annum. For each license in cities with a population of more than five thousand (5,000) and less than ten thousand (10,000) and within a distance of five (5) miles thereof, outside of an incorporated city or town, four hundred fifty dollars (\$450.00) per annum. For each license in cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred dollars (\$300.00) per annum. For each license in cities, towns and unincorporated villages and towns, with a population of less than two thousand (2000), two hundred dollars (\$200.00) per annum. Fraternal organizations one hundred dollars (\$100.00) per annum.”

Opinion No. 174.

Liquor Control Board—Licenses—Collection of Refunds.

HELD: 1. Under Section 4, Chapter 84, Laws 1937, license fees in unincorporated villages and towns having

The act expressly provides that the fee for a license in a city with a population of 10,000 or more, and within a distance of five miles thereof, outside

an unincorporated city or town, shall be \$600.00 per annum. The act further provides that for each license in an unincorporated village with a population less than 2000, the fee shall be \$200 per annum.

It may be urged that inasmuch as a village may be within five miles of an incorporated city, that it is only fair that the fee should be \$600 per annum, because other licensees residing beyond said incorporated village, but within five miles of said city, are required to pay the \$600 license fee per annum.

The legislature has made the classifications, and the question of the fairness or unfairness of the amount of the license must be properly addressed to the legislature. This office can only interpret the law as it finds it. The statute is definite and specific, and no ambiguity is involved, and therefore the language lends its own interpretation. The language expressly states that the license fee to be charged these applicants, if they live in an unincorporated village, is the sum of \$200. It would follow that the liquor control board having charged the vendors in said unincorporated village a fee of \$600, whereas the fee should have been \$200, that said vendors are legally entitled to have a refund of \$400 for each of said licenses. The only question involved is how shall these fees be refunded, if refunded at all.

Section 193, R. C. M. 1935, provides:

"State moneys, how expended by treasurer. No moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer save by virtue of unexhausted appropriation therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state board of examiners, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department."

This office is advised by your department that said license fees have already been remitted to the state

treasurer, and that the law does not permit the state treasurer to make a refund upon the order of the Montana Liquor Control Board.

Section 29 of Chapter 84 of the 1937 Session Laws provides that all receipts from license fees, fines and penalties, collected under the provisions of the act shall be paid to the state treasurer, and by him apportioned and allocated as follows: fifty per cent to the State Public School General Fund, and fifty per cent to the Public Welfare Fund, for the administration of the Social Security Laws.

While the fees that you have received from these applicants, including amounts received by you in excess of that required by law, have been remitted to the state treasurer, and therefore those particular amounts have been earmarked, yet the fund itself is a continuing and existing fund, constantly and continuously being augmented and replenished from fines, penalties and licenses. The State Public School General Fund and the Public Welfare Fund have been the beneficiaries of these excess fees, which they were not entitled to receive. Therefore, if your board deducts the amount of such excess fees from said fund, these beneficiaries would be in the same position as they would have been in had the proper legal fees been charged.

You are authorized to refund to said applicants the excess fees so paid by them to you from license fees, fines, and penalties collected under the provisions of said Chapter 84 of said Act, as funds accrue therefrom, and if said funds accrued, or accruing, are insufficient to refund the same at any specific time, you may refund the same to said applicants, pro rata, from time to time, until the entire excess fees have been remitted.