

Opinion No. 124.

Cities and Towns—Incorporated Cities and Towns—County Commissioners—License Tax—Tax, License, Liquor—Liquor License Tax.

Held: The board of county commissioners has no authority to refund any unused portion of a license tax that was legally and properly collected.

February 15, 1946.

Mr. Edison W. Kent
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Kent:

You have requested my opinion on the following:

Drummond, Montana, was incorporated into a town on August 14, 1945, and prior to that time, the county had assessed the retail liquor license tax as provided for in Chapter 84, Laws of 1937. You ask if it is necessary for the county to refund the unearned portion of said license tax in view of the incorporation of said city.

Chapter 84, Laws of 1937, provides the city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city may issue licenses to persons to whom the board license has been issued under the provisions of the act, and licenses so issued may not exceed a sum equal to fifty per cent

of the license fee collected by the board from such licensee under the act.

Opinion No. 467, Volume 19, Report and Official Opinions of the Attorney General, held:

“Where license taxes have been erroneously levied and collected, the authority levying and collecting the same is authorized under Section 2222, Revised Codes of Montana, 1935, as amended, to refund the taxes, or the portion thereof erroneously collected, where claim is filed within a reasonable time after the discovery of the error.”

This opinion has no effect in the situation you have presented as the authority levying and collecting the instant license tax did so under the full authority of the law.

The authority having been given to the board of county commissioners in this case to collect such license tax, and such having been lawfully collected, it follows that authority to refund such tax, or any portion thereof, must be found in the statutes. No such authority is given, and consequently such tax may not be refunded. The Montana Supreme Court, in the case of *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60, used the following language:

“Board of county commissioners may exercise only powers expressly conferred upon it or necessarily implied from those expressed.”

Again in the same case, the Court held:

“Where there is reasonable doubt as to existence of particular power in board of county commissioners, power must be denied.”

The question of the refunding or recovering of an illegal tax is not presented here, and there is no provision in the Montana law for refunding a balance of a license fee when such license has been legally collected.

It is therefore my opinion that the board of county commissioners has no authority to refund any unused portion of a license tax that was legally and properly collected.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General