

VOLUME NO. 37

OPINION NO. 69

ALCOHOLIC BEVERAGES - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein; COUNTY OFFICERS &

EMPLOYEES - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein; TAXATION & REVENUE - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein; LICENSE FEES - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein; REVISED CODES OF MONTANA, 1947 - Section 4-1-401.

HELD: The county treasurer of each county is required by law to apportion the license tax on liquor to all incorporated cities and towns in his county, regardless of whether a state-owned liquor store is located therein. Since the statistical information necessary for such an apportionment was not available in the past, and will not be available until October 1, 1977, such apportionment will commence with the quarter beginning October 1, 1977.

22 September 1977

Theodore P. Cowan, Esq.
Attorney for Town of Moore
Bank Electric Building
Lewistown, Montana 59457

Dear Mr. Cowan:

You have requested my opinion concerning the apportionment of the license tax on liquor. The specific question you have presented is whether county treasurers are required by law to apportion the license tax on liquor to all incorporated cities and towns in each county, or only to those cities and towns where state-owned liquor stores are located.

It appears from your correspondence that the latter method of apportionment has been used in the past.

Section 4-1-401, R.C.M. 1947, provides in pertinent part:

. . . provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such

regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-4-402, R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (1/4) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (3/4) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sales of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

From the statute it is clear that the percentage of gross sales in each municipality, as they relate to sales in other municipalities within the county, is the basis for the distribution. The statute contains no language indicating that disbursement applies only to sales from state liquor stores. When construing a statute, one must ascertain and declare what is in terms or substance contained in the statute and not to insert what has been omitted. State ex rel Nard's TV & Appliance Inc. v. District Court, 168 Mont. 456, 543 P.2d 1336 (1975). A plain reading of this statute indicates that the tax be distributed on the basis of gross sales of liquor through all retail dispensers in the county, regardless of whether they are public or private stores. The purpose of this apportionment, as found in section 4-1-402, R.C.M. 1947, is to fund law enforcement and the regulation of liquor on local levels. Hence, the spirit of this legislation is to provide funds to all municipalities. Legislative intent is the controlling factor in construing statutory language. The legislative intent must be determined from a reading of the statute in its entirety and not from one particular sentence or section therein. Vita-Rich Dairy, Inc. v. Dept. of Business Regulation, ___ Mont. ___, 553 P.2d 980, 33 St. Rptr. 760 (1976).

The problem that now exists has resulted from a lack of statistical information to ascertain the percentage of sales in municipalities without state stores. Currently, the Department of Revenue reports only state store sales to the county treasurers. The treasurers are basing their tax

distributions on the basis of these statistics and interpreting the words "gross sales of liquor" to mean sales from a state store in the incorporated city or town.

Although the county treasurers are primarily responsible for the proper apportionment of the license tax, this problem has been brought to the attention of the Department of Revenue in order to provide the necessary statistical data to the treasurers to enable proper apportionment. The Department of Revenue has assured this office that a new computer program can provide this information. This new program will not be implemented until the quarter beginning October 1, 1977.

THEREFORE, IT IS MY OPINION:

The county treasurer of each county is required by law to apportion the license tax on liquor to all incorporated cities and towns in his county, regardless of whether a state-owned liquor store is located therein. Since the statistical information necessary for such an apportionment was not available in the past, and will not be available until October 1, 1977, such apportionment will commence with the quarter beginning October 1, 1977.

Very truly yours,

MIKE GREELY
Attorney General