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July 24, 1972

FILE NO. S-502

LIQUOR:
Authority of County Board
Chairman as local liquor
commissioner

Honorable Don Johnson
State's Attorney
Perry County
Courthouse
Pinckneyville, Illinois 62274

Dear Mr. Johnson:

I have your letter of May 17, 1972 wherein you
state:

"A question has recently arisen concerning
the authority of the Chairman of the Board
of Commissioners of Perry County as local
Liquor Control Commissioner in the issuance
of liquor licenses to establishments in the
county.

"The present Liquor Control Resolution of
Perry County, which was adopted on June 16,
1958, provides in Section 11 as follows:

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'The Local Liquor Control Commission of Perry County, Illinois, shall consist of the members of the Board of County Commissioners of said county and such other persons, not to exceed four, as they shall appoint. Chairman of said county board shall be the Local Liquor Control Commissioner and Chairman of said Local Commission.'

"Section I of the Resolution provides that any person desiring to procure a license shall make his application to the Liquor Control Commission of Perry County and further provides that if the application is approved by the 'Liquor Control Commission' that the county clerk shall issue the appropriate license.

"These provisions have been essentially the same in previous liquor control ordinances or resolutions in Perry County since the first was adopted on June 11, 1934. The practice has been that the application is presented to the three members of the Board of County Commissioners and that they vote upon the application. A majority vote has control and upon such affirmative vote the Chairman of the Board of Commissioners as Liquor Commissioner has issued the license. There have never been additional members appointed to the Liquor Control Commission and it has always consisted of only the three county commissioners.

"The present Chairman of the County Board has taken the position that this liquor resolution is contrary of the Dram Shop Act and that he alone has authority to issue or to refuse to issue liquor license, and that other members

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of the County Board, even though they were in favor of the issuance of a liquor license, could not override his authority. We note an Attorney General's opinion dated September 19, 1946, involving the City of Carlinville. This would indicate that sole authority rests with the Chairman of the County Board of Commissioners. I am wondering your opinion in this matter particularly since Perry County has had a nearly forty year history of having such application presented to and acted upon by the entire board of county commissioners acting as a Local Liquor Control Commission."

Article IV of "An Act relating to alcoholic liquors" (Ill. Rev. Stat., 1971, ch. 43, pars. 110 through 114) deals with local control.

Article IV reads, in part, as follows:

"Section 1. * * * in counties in respect of territory outside the limits of any such city, village or incorporated town the county board shall have the power by general ordinance or resolution to determine the number, kind and classification of licenses, for sale at retail of alcoholic liquor not inconsistent with this Act and the amount of the local licensee fees to be paid for the various kinds of licenses to be issued * * *"

"Section 2. * * * the president or chairman of the county board, shall be the local liquor control commissioner for their * * * counties,

and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted; but the authority of the president or chairman of the county board shall extend only to that area in any county which lies outside the corporate limits of the cities, villages and incorporated towns therein * * *

"Section 3. Each local liquor control commissioner shall also have the following powers, functions and duties with respect to licenses, other than licenses to manufacturers, importing distributors, distributors, non-beverage users, railroads, airplanes and boats.

1. To grant and or suspend for not more than thirty days or revoke for cause all local licenses issued to persons for premises within his jurisdiction;

2. To enter or to authorize any law enforcing officer to enter at any time upon any premises licensed hereunder to determine whether any of the provisions of this Act or any rules or regulations adopted by him or by the State Commission have been or are being violated, and at such time to examine said premises of said licensee in connection therewith;

3. To receive complaint from any citizen within his jurisdiction that any of the provisions of this Act, or any rules or regulations adopted pursuant hereto, have been or are being violated and to act upon such complaints in the manner hereinafter provided;

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4. To receive local license fees and to pay the same forthwith to the city, village, town or county treasurer as the case may be."

"Section 4. The local liquor control commissioner shall have the right to examine, or cause to be examined, under oath, any applicant for a local license or for a renewal thereof, or any licensee upon whom notice of revocation or suspension has been served in the manner hereinafter provided, and to examine or cause to be examined, the books and records of any such applicant or licensee; to hear testimony and take proof for his information in the performance of his duties, and for such purpose to issue subpoenas which shall be effective in any part of this State. For the purpose of obtaining any of the information desired by the local liquor control commissioner under this section, he may authorize his agent to act on his behalf."

In my opinion, the act is clear. Section 1 (quoted supra) endows the County Board with the authority of a legislative body that can enact ordinances applicable generally to alcoholic liquor establishments throughout the county. On the other hand, the Chairman of the County Board is authorized and empowered by sections 2, 3 and 4 to administer those ordinances as well as the statutes of the State of Illinois applicable thereto. The executive power is lodged in the

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Chairman of the County Board as Liquor Control Commissioner, who has the sole authority to issue specific licenses, or refuse to do so, within the confines of the county ordinances and the state statutes. The County Board has no administrative authority in regard to issuance or denial of any specific license application. I, therefore, concur in the opinion of my predecessor, (1946 Ill. Atty. Gen. Op. 128) to which you refer in your letter.

Subsequent to issuance of that 1946 Opinion, the Illinois General Assembly apparently recognized the fact that section 3 of the statute was somewhat ambiguous in that the fifth word of that section, which now reads "commissioner," then read "commission." The word "commissioner" was substituted by the General Assembly in 1955, thereby removing whatever ambiguity existed prior thereto with reference to the question you pose.

In your letter you indicate that your current county ordinance, although drafted in 1958, has been essentially the same since June 11, 1934. It is possible that your ordinance

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as first drafted applied to the word "commission" a different meaning and impact than expressed in the 1946 Opinion of the Attorney General (supra). This would explain the origin of the authority which has been historically assumed by your County Board.

Very truly yours,

A T T O R N E Y G E N E R A L