

September 1, 1950
Op. No. 50-319

John A. Duncan, Superintendent
Department of Liquor Licenses and Control
Capitol Building
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Duncan:

Wilson

We have your verbal request for our opinion as to whether a municipality may place an occupational tax on nonresident wholesalers, jobbers or distributors who deliver products to customers within the municipality. The question to be determined is whether one who holds a permit under the Department of Liquor Licenses and Control to deal in spirituous liquors at wholesale possesses also the incidental right by virtue of said permit to transport such products to licensed retailers within the State.

Section 72-110 ACA 1939 lists the kind of licenses which may be granted for wholesale liquor licenses as follows:

" * * * 4. Wholesaler's license to sell all spirituous liquors, two hundred fifty dollars (\$250).

5. Wholesaler's license to sell wine and beer, one hundred dollars (\$100)."

The wholesaler's license authorizes the holder thereof to purchase, receive, store and possess distilled spirituous liquors, to sell same at wholesale on the licensed premises only, and regulations No. 7 and No. 8 issued by the Superintendent of Liquor Licenses and Control, and Section 72-113, Section b, Subsection 10 permits the licensee to transport from his licensed premises for himself only any spirituous liquor which he is authorized under his license to sell; providing that he transport said beverages in the manner provided by law as set out by regulation of the Superintendent. Said Section 72-113 and Regulations No. 7 and No. 8, so far as pertinent to your question read as follows:

"72-113. Unlawful acts. * * * (b) It shall be unlawful * * * *

10. For any distiller, winer, or brewer to use a vehicle for the trucking or transportation of spirituous liquors unless there is affixed to both sides of the vehicle a permanent sign showing the name and address of the licensee and the type and number of his license, in letters not less than three and one-half ($3\frac{1}{2}$) inches in height."

"Regulation No. 7.

No distiller, winer, brewer, or wholesaler shall deliver any spirituous liquors, including beer and wine, except in vehicles owned by such distiller, winer, brewer, or wholesaler or hired by such distiller, winer, brewer, or whole-

saler from a person, firm or corporation registered with and approved by the Superintendent for the purpose of engaging in the business of the transportation of spirituous liquors.

Regulation No. 8.

No vehicle shall be used for the trucking or transportation of any spirituous liquors, including beer and wine, for or by any wholesaler, unless there shall be affixed in a conspicuous place within said vehicle a certificate showing the name and address of the licensee, together with the following inscription: 'Arizona Wholesale Spirituous Liquor License No. . . , Series No. . . . '

Section 72-112, ACA 1939, as amended, authorizes incorporated cities and towns to regulate the manufacture, sale or disposal of spirituous liquors, excepting wholesalers. It appears to us that the license issued by the Superintendent of Liquor Licenses and Control under the provisions of Section 72-108 ACA 1939, to engage in the wholesale of liquor business in Arizona, grants to the holder of such license the incidental right to transport such beverages as he is authorized to sell from his licensed place of business only to licensed retailers in the manner described in Section 72-113, Section b, Subsection 10, and Regulations No. 7 and No. 8 of the Department of Liquor Licenses and Control of the State of Arizona.

It is a well-settled principle that municipalities have such powers as are given by express statute or by necessary implication.

Woodward v. Fox West Coast Theaters,
36 Ariz. 251, 284 P. 350

City of Covington v. Wood,
98 Ky. 334, 33 S.W. 84

Jones v. Stern, 275 Ky. 729,
122 S.W. (2d) 766

Herd v. City of Middlesboro,
266 Ky. 488, 99 S.W. (2d) 458.

The Legislature in 1949 amended Section 16-207, Subsection 18, by deleting portions of the Act and amended the Act somewhat as to the powers of the cities thereunder to impose license taxes but did not include the power to charge occupational tax to transport alcoholic beverages into the municipality. Said section, as amended, reads as follows:

"The common council of such town shall have control of the finances, and of the property of the corporation;

and shall likewise have power within the limits of the town: * * *

To fix the amount of license taxes to be paid by any person, firm, corporation or association for carrying on any business, game or amusement, calling, profession or occupation, and prescribe the method of collection or payment of the same, for a stated period in advance, and fix penalties by fine, imprisonment, or both. Nothing in this act shall be construed as authorizing any town or city to levy an occupational license or fee on any activity where the general law of the state precludes the levying of such a license or fee."

In view of the above section of the State Liquor Control Law and the rules and regulations as above set out, it is our opinion that the City of Nogales is without power to charge occupational tax to wholesalers duly authorized and located in other parts of the state for the privilege of transporting into the City and delivering to licensed retailers therein the beverages which under the permits issued by the State such wholesaler had the right to sell on his premises and transport to his customers.

Trusting the above answers your question satisfactorily,
we are

Very truly yours,

FRED O. WILSON
Attorney General

MAURICE BARTH
Assistant Attorney General

MB:f