

OPINION
46-51

April 11, 1946 (OPINION)

COUNTY COMMISSIONERS

RE: Right to Limit Number of Liquor Licenses

In accordance with your oral request, I write you with reference to the right of the board of county commissioners of McLean County to limit the number of liquor licenses to be issued by the county in unincorporated territories of the county.

As I understand the situation now prevailing in McLean County, it is contemplated that a new ordinance or resolution be enacted by the board of county commissioners, or such ordinance has already been enacted limiting the number of beer licenses to twenty places in areas outside of organized villages and cities and fifteen liquor licenses. The county commissioners have already issued in unincorporated towns in McLean County six beer licenses and six liquor licenses. The new ordinance would permit, therefore, fourteen additional beer licenses and nine additional liquor licenses.

You ask, on behalf of the board of county commissioners of McLean County, by what right the commissioners are authorized to limit the number of licenses to be issued in areas of McLean County under the jurisdiction of the county commissioners. The case of J. A. Thielen v. William Kostelecky et al., 69 N.D. 410, 287 N. W. 513, deals with this very question. In that case the court said, in syllabus 3:

"The power 'to regulate the retail sale of alcohol and alcoholic beverages,' which the Liquor Control Act confers upon the governing body of a city, vests such governing body with power to fix, by ordinance, a reasonable limit on the number of retail licenses to be issued, and thus limit the number of retail liquor stores that may be operated in the city at any one time."

While that case dealt with the power of a city to limit the number of retail liquor stores within its boundaries, the same power and authority is vested in the board of county commissioners in unorganized territories of the county, and therefore, the rule would be the same within the jurisdiction of the county commissioners.

In the opinion in the above cited case, it is stated, "and to refuse to issue a license where the proposed place of business is unfit according to the prescribed standards; and it also vests such board (meaning the city board) with authority to place a reasonable limit upon the number of retail liquor stores to be operated in the city."

Certainly, it cannot be said that the limitation already placed, or proposed, by McLean County of the issuance of not to exceed twenty beer licenses and fifteen hard liquor licenses in unincorporated territories of the county is unreasonable. It seems to me that the same is a reasonable limitation, and directly within the authority of the commissioners under their regulatory powers granted by statute.

In fact, I am of the opinion that if the commissioners see fit to limit the number to less than twenty beer licenses and fifteen hard liquor licenses that such limitation would be reasonable and valid.

Under the authority of the Kostelecky case, the board of county commissioners of McLean County has the right to limit the number of beer licenses and liquor licenses to be issued in McLean County.

NELS G. JOHNSON

Attorney General