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FILE NO. S-663

LIQUOR:
Ordinances

Honorable Robert F. A. Stocke
State's Attorney
Clay County
Louisville, Illinois 62858

Dear Mr. Stocke:

I have your letter of recent date wherein you state in part:

"Clay County provides contractual police services to the Village of Clay City, in Clay County. The Village decided not to revise the ordinance and as it now stands, the Village Ordinance prohibits the sale of any alcoholic beverages to 19 and 20 year olds. The Sheriff desires to know whether he should enforce the Ordinance and make arrests of 18 (sic) and 19 year olds who might be in possession of beer or wine, or whether the State law applies and he should decline to make such arrests."

Clay City is not a home rule unit. Section 7 of article VII of the Illinois Constitution of 1970 provides that "counties and municipalities which are not home rule units shall have

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powers granted to them by law" and certain enumerated powers which are not relevant here. As the Supreme Court in

Heidenreich v. Ronske, 26 Ill. 2d 360 (1962) stated:

" * * * [T]he sole power of a municipality to regulate the sale of alcoholic beverages is that conferred upon it by the State. (Henson v. City of Chicago, 415 Ill. 564, 569; Sager v. City of Silvis, 402 Ill. 262, 265.) In Illinois, the Liquor Control Act provides for the control of all matters relating to alcoholic liquors, and the sole power of an Illinois municipality over the liquor traffic must be found within the ambit of its provisions. Sager v. City of Silvis, 402 Ill. 262, 265."

The new Constitution thus did not change existing laws for units of local government which are not home rule units.

Articles IV and IX of the Liquor Control Act, (Ill. Rev. Stat. 1971, ch. 43, sec. 110 to 114, and 166 to 182), set forth the jurisdiction granted to municipalities over retail selling of alcoholic beverages. Article IX concerns local option and is not relevant here. Article IV does not expressly grant a municipality authority to regulate or limit the sale of alcoholic beverages on the basis of age; neither does Public Act 78-27, which amends the Liquor Control Act to

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permit sale of beer and wine to 19 and 20 year olds, provide municipalities with any jurisdiction to prohibit the sale to 19 and 20 year olds. The amendment establishes a uniform policy throughout the State. Since such express power is not granted, it should not be implied; it is well settled that ordinances which assume directly or indirectly to permit acts or occupations which the State prohibits, or to prohibit acts permitted by the State, are null and void. (I.L.P., Cities, Villages and Other Municipal Corporations, sec. 1105.) Therefore, it is my opinion that the village ordinance which is in direct conflict with State statute, is beyond the power of the village, and it is null and void. The Sheriff should decline to make arrests of 19 and 20 year olds who might be in possession of beer or wine.

Very truly yours,

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