

STATE TAX COMMISSIONER
Charleston, West Virginia

April 15, 1965

Joe F. Burdett
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia

Series 13

Dear Sir:

Enclosed are two copies of regulations issued by the State Tax Commissioner to establish general operating rules and procedures in the office of the General License Division. These regulations are designated Series XIII of Chapter 11-12 of the West Virginia Administrative Regulations.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by the State Tax Commissioner on April 15, 1965 to become effective July 1, 1965.

Very truly yours,

G. Thomas Battle

G. Thomas Battle
State Tax Commissioner

GTB/kc

Filed in Office of the Secretary of State
of West Virginia April 15, 1965
JOE F. BURDETT
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

GENERAL LICENSE

(Chapter 11, Article 12 of the Code)

RULES AND REGULATIONS

G. Thomas Battle
State Tax Commissioner

Effective
July 1, 1965

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-12
(1965)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-12
Series XIII
(1965)

Subject: Rules and Regulations for General License.

Section 1. General.

1.01. Scope.--These regulations establish general operating rules and procedures in the office of the General License Division.

1.02. Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 12, Section 3.

1.03. Effective Date.-- These regulations are promulgated on April 15, 1965 and become effective on July 1, 1965.

1.04. Filing Date.--These regulations were filed in the Office of the Secretary of State on May 28, 1965.

1.05. Certification.--These regulations are certified authentic by the State Tax Commissioner by certification number _____.

Section 2. DEFINITIONS. The term "person" shall mean and include natural persons, partnerships, associations, corporations, and all other organizations or groups by which any of the specified businesses, activities, trades or employments are engaged in or prosecuted.

The term "commissioner" shall mean the State Tax Commissioner.

The term "decal(s)" shall mean decalcomania stamps.

The term "machine" shall mean vending or coin operated devices.

The term "vending machine operators", "operator" or "operators" shall mean all persons owning and operating coin-operated merchandise, service, music and amusement devices or vending machines.

Section 3. APPLICATION FOR AND ISSUANCE OF LICENSES; EVIDENCE OF LICENSES; FEE. The licenses provided for in this article shall be issued in the form of a certificate by the tax commissioner to any person making proper application therefor on forms to be prescribed and furnished by the tax commissioner and tendering the license tax and a filing tax fee of fifty cents for each license certificate requested. The tax commissioner shall collect in full the proper taxes and fees and determine to his satisfaction that all the conditions precedent to the granting of such license have been fulfilled by the applicant before issuing a certificate of license.

Section 4. OWNING AND OPERATING COIN-OPERATED MERCHANDISE, SERVICE, MUSIC AND AMUSEMENT DEVICES, OR VENDING MACHINES. Persons owning and operating coin-operated merchandise, service, amusement or music devices or vending machines shall obtain annual licenses and pay the fees prescribed in this section on or before July one of each year.

The liability for the license to operate any type of coin-operated merchandise, service, amusement or music devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the applicable county clerk's office. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees. Licensed machines may not be sold or ownership transferred without notification to the commissioner listing the name and address of new owner.

The Attorney General has ruled that the person who removes the money

from the machine is liable for the consumers sales and gross sales tax but this does not release the owner of the machines of the responsibility of securing the license for the machine.

Situations exist whereby a vending machine operator will make arrangements to sell machines to a place of business by reducing the percentage of commission or by the owner of the place of business making certain monthly payments until the selling price agreed upon has been paid. This type of an arrangement does not relieve the owner or seller of a machine from the liability for securing the proper license until title has legally passed to new owner. Operators who sell machines on any kind of terms to a place of business should explain to the purchaser that the purchaser will be liable for the licensing of the machine only after title has passed as above outlined and the operator should also explain to the purchaser that his ownership of a vending machine makes the purchaser liable for the securing of a General Store License. The law provides that neither soft drinks, cigarettes nor tobacco products shall be sold over the counter nor through a vending machine owned by the place of business unless the place of business has secured a General Store License.

4.01. License Fee. The annual license fee to own and operate a coin-operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character, shall be fifty cents for each section of any such device which is operated on the coin-in-the-slot principle; the annual license fee to own and operate any coin-operated toilet locker or device, sanitary napkin device or bed vibrator device shall be fifty cents for every such locker or device. The state will not furnish decal stamps for these devices; however, the owner shall identify each machine by installing on each

device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his license number, his street address and name of city and state.

The annual license fee to own and operate a total of twenty or more coin-operated amusement or music devices of the following types shall be: One cent devices--fifty dollars; five cent devices--one hundred fifty dollars; ten cent devices--two hundred twenty five dollars; over ten cent devices--three hundred dollars. The operator of more than one type of such devices shall pay the highest fee prescribed. The license fee to own and operate less than twenty amusement or music devices shall be upon a per device basis as follows: One cent devices--two dollars; five cent devices--five dollars; ten cent devices--ten dollars; over ten cent devices--twelve dollars and fifty cents. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

The annual license fee to own and operate a total of twenty or more coin-operated merchandise or service devices of the following types shall be: One cent devices--fifty dollars; five cent devices--one hundred dollars; ten cent devices--one hundred fifty dollars; over ten cent devices--two hundred fifty dollars. The operator of more than one type of such devices shall pay the highest fee prescribed. The license fee to own and operate less than twenty merchandise or service devices shall be upon a per device basis as follows: One cent devices--two dollars; five cent devices--five dollars; ten cent devices--ten dollars; over ten cent devices--twelve dollars and fifty cents.

Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

The fees herein prescribed are on an annual basis, commencing July one of each year, expiring on the following June thirtieth, and are not pro-ratable if taken out during the license year nor shall fees paid be refundable if a license is revoked, suspended or business ceased during the license year.

Amusement and Merchandise devices can not be combined for licensing. Examples of certifying and applying for license: One operator may have the following amusement devices: 19 - 1¢ devices; 100 - 10¢ devices and 30 - over 10¢ devices--his license fee will be \$300.50 for all these amusement devices which is the highest fee prescribed for owning and operating 20 or more amusement devices. Another example: One operator may have amusement devices as follows: 35 - 1¢ devices; 25 - 10¢ devices; 15 - over 10¢ devices--his fee would be \$300.50 for twenty or more amusement devices and the same operator may have merchandise devices as follows: 50 - 1¢ devices; 30 - 5¢ devices; 40 - 10¢ devices and 75 - over 10¢ devices--his license fee will be \$250.50 for all these merchandise devices which is the highest fee prescribed when owning twenty or more merchandise devices. This operator would have to fill out two certification and application forms, one for amusement devices and one for merchandise devices and his total license fees would be the total of \$300.50 and \$250.50 or \$551.00.

If one owner and operator has only 19 - 1¢ amusement or merchandise devices, his license fee would be \$38.50.

If one owner and operator has only 19 - over 10¢ amusement or merchandise devices, his license fee would be \$238.00 (including fee of 50¢

for license certificate).

If one owner and operator has 25 - 1¢ devices and 35 - 5¢ amusement devices, his total fee would be \$150.50.

If one owner and operator has 25 - 1¢ and 35 - 5¢ merchandise devices, his total fee would be \$100.50.

No license fee shall be required of stores or businesses owning and operating such machines or devices owned by them in their own licensed stores: Provided, however, That where the principal business is the operation of the machines or devices, then licenses shall be obtained as outlined above: And provided further, That any person exempt from or not liable for such license shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his store license number, his street address and name of city and state.

Where operators find it expedient to have one machine on top of a counter or other place which makes the machine available to the public and also desires to have one or more machines in reserve and sometimes stored under a counter or in a back room or other place of storage, it is required that ALL machines on the same premises and same street address and location, shall have the required identification label attached to each machine as herein specified.

The provisions of this section shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the-slot principle.

Application for license required herein shall contain the necessary information for the proper licensing under the foregoing fee schedule for machines that are owned and operated on location by the licensee within this state during the ensuing license year or any part of a fiscal year. Each vending machine operator shall make application to the tax commissioner on forms provided by him, and the applicant shall furnish such information as may be required by the tax commissioner including a certified statement of the total number of machines, by location, of each coin denomination type in each classification, viz. service, music or amusement, and merchandise or service machines: Provided, That vending machine operators operating twenty or more machines are only required to furnish the commissioner with a certified statement as to the total number of machines on location in this state, and the applicant shall be subject to the penalties of false swearing for any untrue statements contained in his application.

The tax commissioner shall assign each license issued hereunder a number. It shall be the responsibility and duty of the owners of all coin-operated devices subject to the licenses herein provided to properly identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his license number, his street address and name of city and state.

In the event any coin-operated device is found on location and not bearing the owner's address and current license number as prescribed above, the tax commissioner, or his agents, may seal the device in such a manner as to make it inoperable. The seal shall state the date sealed and bear the signature and title of the sealer. Anyone other than

the tax commissioner or his authorized agent who shall break or tamper with such seals, or conceal or move a sealed machine from its location shall be guilty of a misdemeanor and subject to the criminal provisions of this article.

The owner of a sealed machine may petition the tax commissioner to remove seal(s) from the owners' machine(s) by filing a petition, on forms provided by the tax commissioner, and paying to the tax commissioner a sealing fee of ten dollars for each sealed machine. After receiving such petition and fee, and after the owner has complied with all the provisions of this article, the tax commissioner shall, within a reasonable time, cause such petitioned seals to be removed by an agent of the tax commissioner. If the owner of the sealed device has not, within thirty days from the date the device was sealed, paid a sealing fee of ten dollars to the tax commissioner as well as having, to the satisfaction of the tax commissioner, complied with all other provisions of this article, then and in which event, the tax commissioner, or his agents, shall take such sealed device into possession and deliver the same to the sheriff of the county in which such machine or device is found, or the sheriff of such county upon order or direction of the tax commissioner, or his agents, shall take such sealed device into possession and forthwith sell such sealed device in the manner provided by law for the sale of personal property for taxes; and from the proceeds of sale, including any currency found in the sealed machine and removed prior to sale, shall pay his costs, including drayage, storage, penalties and other fees due the state and sheriff; and the balance, if any there be, shall be paid to the tax commissioner for deposit and credit in the same manner as are the license fees collected under this section.

Every person subject to the provisions of this article shall make such reports and keep such records as may be required by the rules and regulations of the commissioner and shall permit him to inspect such records and the stocks and supplies on hand at any time. Every such person shall be required to make his records available for inspection by the tax commissioner or his authorized agents.

The commissioner is hereby authorized to make and promulgate such reasonable rules and regulations as may be necessary to administer the provisions of this article and article thirteen-a of chapter eleven, to insure the collection of the taxes imposed thereby: Provided, however, That nothing in this section shall affect the licensing power of a municipality as authorized by a particular municipal charter, general law or municipal ordinance.

4.02. OWNERSHIP OF MULTIPLE OPERATIONS. Each application for licenses under this section will be reviewed by the commissioner and where one owner applies for licenses under two or more names, the owner will be required to furnish evidence to the commissioner that such applications are not submitted in order to reduce the license tax liability of the owner by applying for licenses in two classes under different names when the owner operates two or more vending machine businesses at the same place of business.

Section 5. LICENSE TAX LIABILITY FOR MULTIPLE COIN OPERATED MACHINES.

The mere joinder of several devices capable of independent functioning does not constitute them one machine and shall be treated as separate devices.

Where each unit comprising a battery of vending machines has its own kind of slot and receptacle for receiving the coin(s) and delivery of the

merchandise, thus being independent of the other units insofar as the actual machine function is concerned, each such unit is a separate "machine" or "device" within the contemplation of Section 3, Article 12, Chapter 11 of the Code, as set forth above and is to be licensed accordingly. For example: a cigarette vending machine with a coin operated match dispenser shall be counted as two separate devices.

If the functioning of a machine is dependent upon some function of other parts of the machine, the interplay of forces would be such as to constitute the entire device a single machine. There are numerous types of these "machines or devices" which are best exemplified by cigarette vending and candy machines with a single coin slot, but with a device permitting the vendee to indicate his choice of merchandise, which he may or may not, receive from the machine.

Section 6. LEASES AND CONDITIONAL SALES CONTRACTS. It is a frequent occurrence that various types of vending machines are leased or sold on a conditional basis. Perhaps the best examples are cigarette and soft drink machines. No license will be issued to any person for a vending machine or device until the ownership has been definitely established to the satisfaction of the commissioner. Ownership can not be merely delegated for the purpose of licensing and the payment of taxes. Bona fide ownership must be clearly established to be with the buyer of a machine under a conditional sales contract, or a bill of sale, or the seller will be held liable for all licenses applicable to such machine. Wherever a lessor-lessee situation exists, the lessor shall be liable for all such licenses.

Section 7. HAWKERS AND PEDDLERS, Chapter 11, Article 12, Section 8 of the West Virginia Code, in part, is as follows:

"Any person who shall carry goods, wares or merchandise from place to place either in person or by agent or employee and sell for delivery at the same time to any purchaser at whole-sale or retail, and any person who shall solicit for the purpose of rendering any service shall be deemed a hawker and peddler under this section."

A hawker's and peddler's license must be obtained for each vehicle operated, since the license tax is determined by the capacity of the vehicle involved.

The hawkers' and peddlers' license law provides various exemptions and some clarifications are indicated:

A hawker's and peddler's license does not apply to persons who make sales for delivery at a future date.

A resident of West Virginia who is engaged in the production of agricultural, horticultural or grazing products may sell either his products or those of another such person without obtaining this license. This exemption does not apply in the case of a non-resident or in the case of a resident who buys such merchandise for resale and is not the producer of such products.

No license will be required of a person (resident or non-resident) who engages in the operation of a retail merchandise store to exchange goods, wares or merchandise from such store for agricultural, horticultural or grazing products, or who resells any such products received in the operation of this business. A license will not be required of any other retail business concern selling merchandise over regular routes, provided it has been so operating for at least one year within this State.

Jobbers or wholesalers of beer and soft drinks are not required to purchase a hawker's and peddler's license. Neither are persons who sell items such as petroleum products, ice, wood, meats, milk, ice cream, bread, cake, pies or other baking products, butter and eggs if such products are manufactured, grown or produced by the person. If, however, this type of merchandise is purchased for resale then the selling would be subject to a license. Exemptions are permitted for societies, groups or organizations selling for charitable, religious or benevolent purposes.

Agents or salesmen selling merchandise manufactured by their employers to retail establishments for the purpose of resale are not required to obtain a hawker's and peddler's license. This exemption will not, however, apply to the same agents if they sell such items as green groceries and canned or bottled fruit products.

A person who maintains a stock of merchandise at a fixed place of business in the State will not be liable for a license if sales are made over regular routes and are sold entirely at wholesale, however, before this exemption applies the merchandise must be assessed in the county where located. A wholesaler is not required to have had his routes established for one year or more. The law merely specifies regular routes for selling at retail.

Any person exempt from a license under the above qualifications shall obtain from the commissioner a receipt or exemption decal without cost showing that he is exempt. The exemption shall be effective only for the period specified and shall be coextensive with the entire State. The commissioner shall prescribe and furnish the application form for the exemption receipt or decals, furthermore he is authorized to require the producing of additional evidence if he considers it necessary to definitely establish the qualifications of the applicant for an exemption.

Section 8. JUNK DEALERS AND THEIR AGENTS. Junk shall mean old or scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel and other scrap ferrous or non-ferrous metals.

The term "junk dealers" shall include all persons engaged in the business of buying or selling junk.

The term "junk dealer's agents" shall include all persons who buy or sell junk on behalf of a junk dealer on other than a salaried basis.

The term "itinerant junk collector" shall include only persons who gather junk from place to place with the aid of a cart or vehicle hand drawn or propelled, who have no fixed place of business.

Inasmuch as there are restrictions as to who can qualify for a license to engage in the junk business, the affidavit application form provided by the commissioner must be completed in its entirety. Failure to use the official application or to supply all required information will only serve to delay issuance of the license.

In applying for a Junk Dealer's license the complete address must be shown and the applicant must indicate on his application whether or not his place of business is located WITHIN or OUTSIDE the corporate limits of a municipality. If inside, the name of the municipality must be stated. Applications for salvage yards located outside municipalities should be sent to the State Road Commission in care of Outdoor Advertising Division.

Every resident, except salaried employees of a duly licensed junk dealer, who buys or sells junk for or on behalf of one who is a junk dealer and does not otherwise buy or sell junk, is required to secure a junk dealer's agent's license.

Every resident who gathers junk, free from cost, as distinguished from one who buys or sells junk, by means of a cart or vehicle, and who has no fixed place of business, is required to secure an itinerant junk collector's license.

It is understood that a resident who buys or sells junk on his own behalf or for or on behalf of one other than a junk dealer duly licensed by the commissioner and in addition buys or sells junk for or on behalf of a junk dealer so licensed, is required to secure a junk dealer's license.

Any resident junk dealer with an established place of business engaging in sales or parts or items from his inventory to the public is also liable for a "special" store license.

Reference to Other Statutes.--Article 23, Chapter 17 of the Code of West Virginia, as amended, relating to salvage yards provides that salvage yards located OUTSIDE the corporate limits of municipalities are exempt from the provisions of Chapter 11, Article 12, Section 7 (General License Law) and Chapter 11, Article 13-A (Store License Law) of the Code.

General License Law, Chapter 11, Article 12 of the Code, was not amended or changed in any manner by the 1963 Legislature, however, Chapter 17, Article 23 of the Code (State Road Commission) was amended and relates to salvage yards. As a matter of general information the State Road Commission will administer Chapter 17, Article 23 of the Code, which relates ONLY to salvage yards located OUTSIDE the corporate limits of municipalities and the SRC will issue licenses at the rate of \$50.00 each and the license period will be on a calendar year basis from the first day of January to the thirty-first day of December of each year.

Junk Dealers, Junk Dealer's Agents, Itinerant Junk Collectors, Non-Resident Junk Dealers or Non-Resident Junk Dealer's Agents will continue to be licensed under the General License Law regardless of their location. Junk Dealers, Junk or Salvage Yards located WITHIN the corporate limits of any municipality will also continue to be licensed under the General License Law. No change has been made in the license fee for any of the above classifications under the General License Law.

Section 9. TRADING STAMPS. Chapter 11, Article 12, Section 5 of the West Virginia Code, in part, is as follows:

"The annual license fee to sell or offer for sale merchants' trading stamps, premium stamps or stamps or certificates of like nature, or to undertake to redeem such stamps or certificates in money or goods, shall be one hundred seventy-five dollars."

This fee does not apply to any coupon or similar device issued and redeemed by a manufacturer or packer.

The license imposed under this section of the statute shall not be coextensive with the State, but a separate license shall be required for each county in which the licensee operates.

Trading stamp companies will not be permitted to withdraw from a county on or after July first to escape the license tax. Any withdrawal must occur prior to that date or the license tax must be paid for the full year.

Section 10. FORTUNE TELLING. Chapter 11, Article 12, Section 6 of the West Virginia Code is as follows:

"The annual license to act as a fortune teller, palmist, phrenologist, spiritualist, medium, clairvoyant, mind reader or any other person who performs the art or profession of telling the past or forecasting the future, shall be two hundred dollars."

A fortune telling license is not valid unless it bears the name of the person. Trade names will not be acceptable--the license certificate shall show the real name and the trade name as:

MATILDA ROXBORA - DBA, MADAM ROSETTA

but not just Madam Rosetta.

The person designated by the license certificate is the only one who is legally authorized to act as a fortune teller.

Section 11. COLLECTION AGENCIES. Chapter 11, Article 12, Section 12 of the Code of West Virginia, in part, is as follows:

"Solicitation or collection by or through an agent operating within this State shall be considered to be engaging in the business of a collection agency within this State."

Any person desiring to qualify as a collection agent shall before applying for a license execute a continuing bond on a form prescribed and furnished by the commissioner. The bond shall be in the sum of five thousand dollars (\$5,000.00) payable to the State of West Virginia with satisfactory corporate surety. The collection agency bond shall be filed with the state tax commissioner.

Section 12. EMPLOYMENT AGENT. Any person desiring to be licensed as an employment agent shall first present his application to the Commissioner of the West Virginia Department of Labor for approval. The Commissioner of Labor shall determine the eligibility of all applicants for an employment agent's license and shall notify the tax commissioner as to those qualifying to be duly licensed. The tax commissioner shall then issue the license upon receipt of the proper payment of the required license fee.

Section 13. COIN OPERATED LAUNDRIES. Notwithstanding all other provisions of Chapter eleven, Article twelve of the Code, the owner or operator of a coin operated laundry shall not be required to obtain any license except a general store license, as provided in Article thirteen-a, Section two, and a decalcomania stamp for each coin operated machine owned by the operator of said laundry and situate in said laundry. The decalcomania stamp for each of the said machines shall be obtained from the commissioner at a cost not exceeding fifty cents.

Section 14. ITINERANT VENDORS. Chapter 11, Article 12, Section 10 of the Code of West Virginia, in part, is as follows:

"The term 'itinerant vendor' shall mean and include all persons who engage or conduct within this State, either in one locality, or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy either in whole or part, a room, building or other structure, or who use, lease or occupy for such purpose, a room or rooms in any hotel or lodging house, for the exhibition and sale of such goods, wares and merchandise-----."

No person shall engage in the business of an itinerant vendor without having obtained a license at a cost of five hundred dollars. Every itinerant vendor, before becoming eligible for a license, shall execute a continuing bond in the form prescribed and furnished by the commissioner with satisfactory corporate surety, in the penalty of five thousand dollars payable to the State of West Virginia. The bond shall be filed with the commissioner.

Section 15. PHOTOGRAPHY. Photographers having no fixed place of business and traveling about from place to place selling photographs enclosed in picture frames to the public generally and making deliveries

at the time sales are made are required to have a hawker's and peddler's license.

A photographer operating a stand or concession at carnivals or other shows will be required to pay the same fee as other concessionaires.

Coin operated photograph machines will be subject to automatic devices licenses as provided in Chapter 11, Article 12, Section 3 of the Code of West Virginia.

Section 16. COIN OPERATED RADIOS AND TELEVISION SETS. Coin operated radios and television sets will be licensed under Chapter 11, Article 12, Section 3 of the Code of West Virginia, relating to coin operated devices. The statute contemplates no exemption, therefore these devices shall be licensed under Section 4 of these Rules and Regulations.

Section 17. COIN Operated POOL TABLES. When the coin-operated pool table is owned by a vending machine operator, then he is required to include the coin device in his certified list of coin-operated devices BUT, the proprietor of the place of business where the pool table is located is liable for the license for the pool table. As a matter of information to proprietors who have pool tables, coin-operated or otherwise operated or played on in their place of business, there is a State Law (Chapter 11, Article 12, Section 14) which prohibits persons under the age of eighteen years to play, remain or loiter in the room where pool tables are located and the proprietor of a business which includes the use or operation of a pool table has the responsibility of not violating the law.

Two licenses may be required for coin-operated pool tables. One license for the coin device and one for the pool table. When the proprietor of a properly licensed business owns a coin-operated pool table, he is liable for the license for the pool table but he is only required to affix his identification label on the coin device.

A General Store License is required for a store in which soft drinks or tobacco products are sold or purchased; or when the proprietor owns and operates a coin operated device.

Section 18. LICENSING OF VENDING STANDS SET UP BY THE DEPARTMENT OF VOCATIONAL REHABILITATION AND OPERATED BY BLIND PERSONS. Vending Stands established and operated by blind persons under the direction or supervision of the Director of Public Assistance are not subject to state license taxes.

Section 19. TIME FOR WHICH LICENSES ARE GRANTED. Chapter 11, Article 12, Section 20 of the West Virginia Code, in part, is as follows:

"All annual licenses issued under the provisions of this article shall be for a period of one year beginning on the first day of July and ending on the thirtieth day of the following June-----."

The only license categories which do not indicate an annual license fee effective July 1, 1957 are Circuses, Carnivals and Other Public Shows and Theatres and Public Shows.

Section 20. TRANSFERS AND REPLACEMENT OF LICENSES. Every license issued under this article shall confer a personal privilege to transact the business, activity, trade or employment specified and shall not be exercised by any other person. The license shall not be assignable.

The change in the status of a firm will not affect the validity of a license so long as one or more members of the original licensing group remains.

A vending machine operator is privileged to move a licensed machine or device from location to location as often as necessary without the payment of an additional fee.

Section 21. EFFECT OF STATE LICENSE. Payment for and the issuance of a license certificate shall not be deemed as legalizing any act which may be in violation of law, nor exempting any person from any penalty prescribed for such violation.

The commissioner and his deputies are not required to pass upon the merits of a case as to whether or not a game, device or activity for which a license is issued is legal under the criminal statutes of the State. This is a responsibility reposing with the law enforcing agencies. The commissioner shall not be liable for any refunds arising out of such circumstances.

Section 22. PENALTIES WHEN BUSINESS IS TRANSACTED WITHOUT LICENSE.

Any person engaging in or prosecuting any business, activity, trade or employment without obtaining a license before commencing same or continuing the same beyond the termination date of the license shall, in addition to paying the license tax, be liable to the following penalties:

"If the license tax to which he is subject is an annual one, or for a period of one month or more, ten per cent of such tax for each month or part thereof during which he has been in default; if the license tax aforesaid is for any period less than one month, ten per cent of such tax for each such tax period or part thereof during which he has been in default-----."

(See Code 11-12-27)

A delinquent taxpayer shall, in addition to all other penalties, be liable to the payment of all back taxes and penalties for a period not exceeding five years which shall be construed to mean the current fiscal year plus the immediate past four fiscal years.

Section 23. UNPAID CHECKS COVERING LICENSE FEES AND PENALTIES. This regulation is promulgated in order to clarify situations where non-certified checks have been received with applications for license and the license has been issued and, at a later date, the checks are returned unpaid by the banks because of insufficient funds. Such a situation results in a person having a current license in his possession but the commissioner has not received the license tax.

Under these conditions, the commissioner will consider the license tax and fees as unpaid and delinquent as of the date the bad check was received after having been returned unpaid by its bank and will add the penalties as provided for in the General License Law.

The purpose of this regulation is to give the commissioner authority to suspend or revoke or to repossess the unpaid-for license. The commissioner may, in his discretion, invoke injunction proceedings.

Section 24. REFUNDS. The general license statute does not make any specific provision for refunds. It shall be the policy to recognize erroneous payments for licenses and make proper refunds. It is to be understood that, if and when refunds are recommended to the State Auditor, that the amount will reflect only the license tax but any fees paid will be forfeited. The fees will not be refunded since they constitute payment for services rendered. Even though the license may have been issued in error the issuing agent has performed the

service for which the fee was paid, therefore, the fee(s) will not be included in the reimbursements.

Section 25. RECORDS AND REPORTS. Every person subject to the provisions of Article 12, Chapter 11 of the Code, shall make such reports and keep such records as may be required by the rules and regulations of the commissioner and shall permit him to inspect such records and the stocks and supplies on hand at any time. Every such person shall be required to make his records available for inspection by the commissioner or his authorized representatives.

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References are to sections in W. Va. Adm. Reg. 11-12, Series XIII

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