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CLARK COUNTY FISCAL COURT
ORDINANCE 86-2

AN ORDINANCE RELATING TO LICENSE FEES UPON ALL PERSONS WHO ARE ENGAGED OR EMPLOYED IN ANY TRADE, OCCUPATION OR PROFESSION WITHIN THE COUNTY OF CLARK, FOR THE HEALTH, EDUCATION, SAFETY, WELFARE AND CONVENIENCE OF THE INHABITANTS OF CLARK COUNTY, KENTUCKY.

Be it Ordained by the Fiscal Court of the County of Clark, Commonwealth of Kentucky, as follows:

ARTICLE I

DEFINITIONS.

The following words, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

1. Director of Finance: Means an official director of the occupational tax, to be appointed by the Clark Fiscal Court.
2. Treasurer: Clark County Treasurer.
3. County: Means Clark County, Kentucky, including the city of Winchester and any other community whether incorporated or not.
4. Business: An enterprise, activity, profession or undertaking of any nature conducted for gain or profit, whether conducted by an individual, copartnership, association or any other entity, but shall not include the usual activities of boards of trade, chambers of commerce, trade associations or unions (or other association performing the services usually performed by trade associations or unions); community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational or civic purposes, for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, education or fraternal purposes, where no part of the earnings of income or receipts of such units, groups or associations inures to the benefit of any private shareholder or individual.

5. Association: A partnership, limited partnership or any other form of unincorporated enterprise, owned by two (2) or more persons.

6. Corporation: A corporation or joint stock association organized under the laws of the United States, the State of Kentucky, or any other state, territory or foreign country or dependency.

7. Employer: An individual, copartnership, association, corporation, governmental body or unit or administration or agency, or any other entity, who or that employs five (5) or more full time employees on a salary, wage, commission or other compensation basis, regardless of whether such employer is engaged in business as above defined, or is excluded by the terms of such definition.

8. Employee: Any person who renders services to another for a financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter.

9. Sales: Net sales of merchandise or of services, or of both, computed by whatever method of accounting is authorized for federal income tax purposes.

10. Sales within Clark County: Includes sales of merchandise delivered to a customer within Clark County or services performed within Clark County for a customer.

11. Net Profit: The net income from the operation of a business or enterprise after provision for all costs and expenses incurred or enterprise after provision for all costs and expenses incurred in the conduct thereof shall be the same as reported for federal income tax purposes excluding items exempted under this article but without deduction of taxes based on income.

12. Nonresident: An individual, copartnership, fiduciary, association or corporation. Whenever the term "person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word,

as applied to associations, shall mean the partners or members thereof and as applied to corporations, the officers and directors.

14. Resident: An individual, copartnership, association, corporation or other entity domiciled or having a business status in Clark County.

15. Licensee: Any person required hereunder to file a return or to pay a license fee under this article.

16. Trade, occupation or profession: Shall include any and all activities and the rendering of any and all services of all kinds or other remuneration, or net profit or gain of any kind when applied to persons so engaged for themselves whether the person be a resident of Clark County or not.

17. Gross receipts: The phrase "gross receipts" and the word "compensation" when applied to a person employed by others shall have the same meaning and shall include the gross amount of all salaries, wages, commissions, bonuses or other money payments of any kind, or other consideration have a monetary value, which a person receives or becomes entitled to, or is given credit for by an employer, without deduction for withholding taxes, social security benefits, any form of insurance or retirement benefits, other deductions made by an employer in calculating "take home pay" provided, however, that any traveling expenses actually incurred and paid by the employer, gratuities such as "tips" paid by someone other than the employer, and wages, salaries or other compensation received by domestic servants employed in a private home, shall be exempt from the operation of this order.

18. The singular shall include the plural, the plural shall include the singular, the masculine or feminine shall include both and the neuter genders wherever susceptible to such.

ARTICLE II

REGULATION, ADMINISTRATION, ENFORCEMENT AND COLLECTION OF LICENSE FEES AND THE PURPOSE THEREOF.

1. It shall be the duty of the Director of Finance to collect all license fees and deposit the same in the General Fund of Clark County, to be used to defray the general expenses

of the County Government. The Director of Finance shall have the power and it shall be his duty to make and publish such rules and regulations as may be necessary to administer this ordinance and to provide such printed forms as may be required for reporting, paying and receipting for all such license fees and for all other requirements in the proper and efficient administration of this ordinance.

2. The Director of Finance or any agent or employee designated in writing by him is hereby authorized to examine the books, papers and records of any employer or supposed employer or of any licensee or supposed licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee imposed by the terms of this ordinance. Each such employer or supposed employer or licensee or supposed licensee is hereby directed and required to give to the Director of Finance or his duly authorized agent or employee the means, facilities and opportunity for such examination and investigation as are hereby authorized. The Director of Finance is hereby authorized to examine any person under oath concerning any wages, salaries, commissions or other compensation or net profits which were or should have been returned; and to this end he may compel the productions of books, papers, records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such wages, salaries, commissions or other compensation or net profits, to the extent that any officer empowered to administer oaths in this state is permitted to so order.

ARTICLE III

WHO MUST OBTAIN: BASIS OF COMPUTATION.

1. All persons engaged in any trade, occupation or profession within Clark County, when employed by another who employs as many as five persons on a full time basis, shall pay a license fee measured by and equal to one and one quarter (~~1.25%~~) percent of gross receipts paid for such service. *Amended to 1/2*

2. All persons engaged in any trade, occupation, or profession within Clark County, Kentucky, for themselves,

for profit or gain and who have as many as five or more full time employees, shall pay a license fee measured by and equal to one and one quarter ^{1/2} (~~1.25%~~) percent of the net profit realized from such activity.

3. Where salaries, wages, commissions and other compensations under (1) above are earned for work done or services performed or rendered both within and without of Clark County, such license fee shall be computed by obtaining the percentage which the compensation for work performed or services rendered within Clark County bears to the total compensation earned.

4. The net profits of business or professions from activities conducted in Clark County under (2) above shall be computed as follows: multiply the entire net profit from all sources by a business allocation percentage to be determined by:

(a) Ascertain the percentage which the gross receipts of the license from sale or service rendered within Clark County bears to the total gross receipt from sales or service rendered wherever made.

(b) Ascertain the percentage which wages, salaries and other personal service compensation for the period covered by the report for services performed or rendered within Clark County bears to the total wages, salaries and personal service compensation for such period of all the licensee's employees within and without Clark County.

(c) Adding together the percentages determined in accordance with subparagraphs (a) and (b) above, and dividing the total so obtained by two (2).

5. It shall be unlawful for any person to engage in any trade, occupation or profession within Clark County without withholding, reporting and paying the license fees herein provided and required. Portions of this ordinance prescribing a penalty in the form of fine or imprisonment, shall mean and include the individual members of a firm, partnership or association and the officers of any governmental body or agency or any corporation.

ARTICLE IV

CREDIT FOR LICENSE FEES PAID TO THE CITY OF WINCHESTER, KENTUCKY.

All persons engaged in any trade, occupation or profession within the City of Winchester, Clark County, Kentucky, when employed by another, shall receive a credit against the license fee herein imposed for any sum paid to the City of Winchester, Kentucky, for the license fee imposed by the City of Winchester. Whenever the license fee imposed by the City of Winchester equals or exceeds the license fee imposed by the Clark County Fiscal Court the Director of Finance can waive the requirement of filing a return with the Director of Finance, unless the person works both within the city limits of Winchester, Kentucky and in the unincorporated part of Clark County in which case the license fee under this ordinance shall be applicable to the work performed in the unincorporated area of Clark County, Kentucky without any credit for the license fee paid to the City of Winchester, Kentucky.

ARTICLE V

EXEMPT ACTIVITIES.

1. Because of the undue burden of administration, no license under this article shall be required of a person employed by an employer who employs less than five full time employees. The Director of Finance is empowered to draft regulations defining full time employees for the purpose of this ordinance.

2. No license shall be required of a minister of religion who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect or religious organization, to teach and preach its religious doctrines or to administer its rites in public worship, in the performance of one (1) or more of those duties; however, it is not intended to exempt such ordained minister of religion from the necessity of paying a license fee for work done or services performed in Clark County in activities not connected with his regular duties as a minister of religion.

3. No license under this article shall be required of nonresidents who sell farm products, other than trees, shrubs or ornamental plants, in Clark County, or nonresident owners who sell livestock in Clark County or who board their livestock in Clark County for breeding purposes. The activities described in this subsection shall not constitute being engaged in any occupation, trade, profession or other activity as mentioned in Article III herein.

4. Natural persons of the age of sixty-five (65) and older shall be exempt from the provisions of the occupational license fee as to the first ten thousand (\$10,000.00) dollars of salaries, wages, commissions or other compensation earned by such persons in Clark County for work done or services performed or rendered in Clark County.

5. No license under this Article shall be required of any person authorized by the City of Winchester or the Clark Fiscal Court to demonstrate, sell or offer for sale any goods, wares or merchandise at an annual, semi-annual or other festival or arts and crafts show.

6. All persons engaged in any trade, occupation or profession within the City of Winchester, Clark County, Kentucky, for themselves, for profits or gains who has paid a license fee to the City of Winchester for the privilege of doing business within the City of Winchester, Clark County, Kentucky shall be exempted from paying a license fee to the Clark County Fiscal Court under the terms of this Ordinance.

ARTICLE VI

DUTY OF EMPLOYER TO WITHHOLD, REPORT AND PAY LICENSE FEES; RECORDS.

1. Each employer who employs five (5) or more persons on a full time basis within Clark County shall deduct monthly, or more often than monthly, at the time of the payment thereof, the license fee due from each employee measured by the amount of salaries, wages, commissions or other compensation due by such employer to such employee

and shall pay to Clark County government the amount of license fee so deducted.

2. The payment required to be made on account of deductions by employers shall be made quarterly to the Clark County government, for the quarterly periods ending the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December, on or before the last day of the month following the quarter of such deduction; however, any employer withholding three hundred (\$300.00) dollars or more license fee during any quarter shall file a return and pay the license fee withheld monthly.

3. Each employer who employs five (5) or more persons within the unincorporated area of Clark County shall, annually during the month of January of each year, make a return to the Director of Finance in which it sets forth the name and residence of each employee of such employer employed during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by such employee together with such other pertinent information as the Director of Finance may require; however, the failure or omission by any employer to deduct which license fee shall not relieve the employee from the payment of such license fee and compliance with such regulations with respect to making returns and payments thereof, as may be fixed in this article, established by the Director of Finance, of the Clark Fiscal Court.

4. No church, religious congregation or religious society of any creed is required under the terms of this article to withhold or deduct any sum from the wages, salaries, commissions or other compensation due by such church, religious congregation or religious society to its employees as salaries, wages, commissions or other compensation; however, this failure to withhold by such employers such license fees shall not relieve the employees of such churches, religious congregations or religious societies from the payment of

license fees required by this article.

5. Nothing in this section shall be construed to mean that employees of churches, religious congregations or religious societies of all creeds (except duly ordained ministers) shall be relieved from the payment of any occupations license fee in compliance with all regulations established by the Director of Finance with respect to making returns and payment of such fees.

ARTICLE VII

SEPARATE RETURNS; PAYMENTS, CONFIDENTIALITY.

1. Each person subject to a license fee imposed by this article shall, on or before the fifteenth day of the fourth month following the close of each year, make and file with the Director of Finance a return, in duplicate, on a form furnished by or obtainable from the Director of Finance, setting forth the aggregate amount of salaries, wages, commissions and other compensation or net profits during the preceding year, with such other pertinent information as the Director of Finance may require; however, where the entire license due under this article has been withheld under the provisions hereof, the Director of Finance may waive the filing of such return by such licensee; further, where the fiscal year of the business, profession or other activity differs from the calendar year and the licensee filed federal income tax return of such other fiscal period, the license fee shall be measured by the net profits of the fiscal year, and where the return is made for a fiscal year or any other period different from a calendar year, such return shall be made on or before the fiteenth day of the fourth month following the end of such fiscal year or other period. Such return shall also show the amount of the license fee imposed by this article.

2. The person making the return shal, at the time of the filing thereof, pay to the Director of Finance the amount of license fees shown as due thereon, however, where any portion of the license fee so due shall have been deducted at the source, credit for such amount shall be

deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of the filing of such return, as hereinabove provided; and it shall be the duty of each employer who has deducted the license fee from the wages, salaries, commissions or other compensation referred to in Article VI to furnish such employee a statement showing the amount of salary earned and license fee deducted and paid by such employer during the preceding calendar year, on or before the fifteenth day of February of each year.

3. The Director of Finance shall have the authority to extend the filing of such return in his discretion. Such extension shall be upon the written request of the licensee; however, any balance unpaid when payment is due under the terms of this article shall bear interest at the rate of eight (8%) percent per annum until paid.

4. Any information gained by the Director of Finance or any other official or agent or employee of the Clark County government as a result of any returns, investigations, hearings or verifications required or authorized by this article shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law; and any person or agent divulging such information shall, upon conviction, be subject to a fine of not exceeding one hundred dollars (\$100.00) or imprisonment not to exceed ten (10) days or both at the discretion of the court; however, such persons may disclose to the commissioner of revenue of the state or his duly authorized agent all such information and right to inspect any of the books and records of the Clark County government if such commissioner of revenue of the state grants to the Clark County government the reciprocal right to obtain information from the files and records of the department of revenue of the state and maintains the privileged character of the information so furnished to him.

5. All license fees imposed by this article remaining unpaid after they become due shall bear interest at the rate of ten (10%) percent per annum, and the person from whom such license fees are due shall further be charged a penalty of one and one-half (1½%) percent of the amount of the unpaid license fee for each month or fraction of a month such license fees remain unpaid. Any person or employer who fails or refuses to withhold monthly the license fee measured by a percent of salaries, wages and other methods prescribed, or who fails to pay such money, after withholding the same, to the Director of Finance at the time it is due as provided under the terms of Article V shall become liable for the amount due to Clark County and the same shall bear interest at the rate of ten (10%) percent per annum in addition to which a penalty of four and one-half (4½%) percent of such amount shall be added thereto for each month or fraction of a month said license fees remain unpaid.

ARTICLE VIII

COMMENCEMENT DATE AND DURATION.

The license fees imposed by this Ordinance shall be effective beginning October 1, 1986, and shall remain in force and effect until repealed or modified according to law.

ARTICLE IX

PENALTIES FOR VIOLATIONS.

1. Any person who shall fail, neglect or refuse to make any return required by this Ordinance, or any employer who shall fail to withhold such license fees under the terms of this Ordinance, or to pay over to the Clark County government fees so withheld under the terms of this Ordinance, or any person who shall refuse to permit the Director of Finance or any agency or employee designated by him, in writing, to examine his books, record, papers, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of earnings or profits in order to avoid the payment of the whole or any part

of the license fee shall, upon conviction, be subject for each offense to a fine or penalty not to exceed five hundred (\$500.00) dollars and/or to imprisonment for a period not to exceed one (1) year. The defendant shall, upon conviction, pay all court costs for each offense.

2. Any person who shall engage in the occupations without first obtaining the required license therefor, or who shall fail to pay the required license fee when the same shall be due shall, upon conviction, be subject for each offense to a fine or penalty of not less than ten (\$10.00) dollars nor more than five hundred (\$500.00) dollars and/or imprisonment for a period not to exceed twelve (12) months; and each day that any person continues to operate without the required license shall be deemed a separate offense.

ARTICLE X

SEVERABILITY.

Each section and each provision of each section of this order are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person, licensee, class or group, be held unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this order, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of every other.

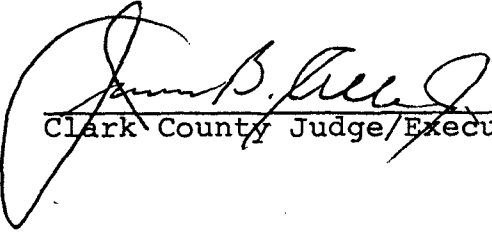
ARTICLE XI

REPEALING CLAUSE.

All Orders, Resolutions or Ordinances or any parts thereof in conflict with the Provisions of this Ordinance are hereby repealed.

Introduced for first reading on Motion made by Judge Allen and seconded by Magistrate Shearer and passed by majority of vote of the Clark County Fiscal Court in duly session assembled on the 16th day of April, 1986, and finally adopted, as amended, after due advertisement on Motion made

by Magistrate Shearer and seconded by Magistrate Jefferson
and passed by majority vote of the Clark County Fiscal
Court in duly session assembled on the 14th day of May, 1986.


Clark County Judge/Executive

ATTEST:


Clark County Court Clerk