

SUPREME COURT TAKES ZIEN CASE

Attorneys Argue Litigation to Determine Status of Duluth's Dry Ordinance.

BRIEFS ARE SUBMITTED

Attorney Samuelson Adds Authorities to Those Presented to District Court.

City Attorney John Samuelson, representing the city, and Howard T. Abbott for the plaintiff, argued the appeal of the Zien case before the supreme court at St. Paul yesterday. Briefs were submitted and the case was taken under advisement.

The brief filed by City Attorney Samuelson contends that the city is not required to show cause for refusing all liquor license, and that the petition of the plaintiff failed to show justification for the issuance of a writ of mandamus.

City's Law Point.

Quoting a court decision on this case, the brief for the city says in part:

"Before the extraordinary writ of mandamus can be successfully invoked against a person, it must appear that it is the clear duty of such person to perform the act at the particular time and in the particular manner which is demanded."

Additional decisions from similar cases, favoring the city's arguments, have been added to the authorities submitted by City Attorney Samuelson to the district court.

Facts in Issue.

Aug. 23, 1916, Isador Zien filed application for a saloon license, with the avowed intention of trying out the legality of the dry ordinance. The application for a license was denied by the council without the formality of giving a reason for the refusal.

Zien obtained a writ of mandamus from the district court, returnable Sept. 15, 1916, requiring the city to show cause for its action. The city attorney filed a demurrer to the petition, claiming that it failed to state facts entitling the petitioner to relief. The demurrer was sustained by the court and the alternative writ was discharged.

An appeal to the supreme court followed.