



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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September 22, 1975

OPINION LETTER NO. 197



Honorable Donald L. Manford
Missouri Senate, 8th District
1000 Commerce Building
Kansas City, Missouri 64106

Dear Senator Manford:

This letter is response to your opinion request asking as follows:

"Does Mo. Constitution prohibit the passage of a statute by the General Assembly on prohibition of taxing income sources which would by such passage be retroactive in application?"

You further state in your request for an opinion that:

"Federal Rebate--Can the General Assembly either in special session yet in 1975 or during the regular session in 1976 pass a statute which would prohibit the Dept. of Revenue from taxing federal rebate as income of Missouri taxpayers for calendar year 1975?"

We do not believe that such law would violate Section 13 of Article I of the Missouri Constitution, which prohibits the enactment of a law retrospective in its operation because such a constitutional provision has no application to an enactment of a law which impairs the state's rights. Graham Paper Co. v. Gehner, 59 S.W.2d 49 (Mo.Banc 1933).

It is impossible for us to determine at this point, of course, precisely what type of legislation will be drafted for

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consideration by the Missouri General Assembly, if any, and whether such legislation will pertain to taxes due for this or for subsequent years. In any event, we believe your attention should be called to the holding in the Graham Paper Co. case, supra, in which the Missouri Supreme Court held that a law which purportedly forgave an obligation due the state violated what is now Section 39(5) of Article III of the Missouri Constitution which prevents the releasing or extinguishing of an obligation due the state. In such case the court construed the effect of a law which became effective July 3, 1927, which provided that income subject to state tax should be determined by including a reasonable proportion apportioned to this state of net income derived from business partially within and partially without the state. The income tax law prior to such amendment provided that the entire net income was subject to tax even though business was transacted partly within and partly without the state. The court held that the provisions of the law which became effective July 3, 1927, were applicable only to that portion of the year after July 3, 1927 and that the income tax for that portion of the year prior to July 3, 1927 was to be determined without regard to apportioning income from business done partially within and partially without the state. The court held that to apply the law which became effective July 3, 1927 to income "for the calendar year 1927" would violate the provisions of Section 39 (5) of Article III of the Constitution.

Therefore, while we are unable in the premises to answer your question precisely, we believe that caution dictates that the holding in the Graham Paper Co. case be reviewed to determine whether legislation should be proposed, and, if so, how such legislation should be drafted.

Very truly yours,



JOHN C. DANFORTH
Attorney General