



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

November 8, 1985

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

OPINION LETTER NO. 144-85

The Honorable Fred Williams
State Representative
5852 Julian
St. Louis, Missouri 63112

Dear Representative Williams:

This letter is in response to your request for an opinion as to whether the practice of the state Department of Revenue in furnishing certain equipment, supplies, and personnel to its fee agents is in violation of Article III, Section 38(a) of the Missouri Constitution, which forbids the granting of public money or property to any private person, association or corporation.

The practice you speak of occurs in conjunction with the operation of an office by a fee agent appointed by the Director of Revenue pursuant to Section 136.055, RSMo 1984 Supp., for the purpose of carrying out certain duties of the Director. Among these are the sale of motor vehicle and driver's licenses and the collection of sales and use tax on motor vehicles and trailers. The fee agent is not an employee of the State of Missouri and draws no salary. Rather, the agent charges his customers a stated statutory fee for each transaction. See, Section 136.055, RSMo 1984 Supp.

Attached is a copy of a typical agency contract between a fee agent and the Director of Revenue outlining the fee agent's responsibilities when acting on behalf of the Director of Revenue. On page 3, paragraph 5, of the document, the Director agrees to furnish all necessary validation equipment, official forms, licenses, vision test equipment, and photographic equipment. Further, it is our understanding that the Department of Revenue furnishes postage and personnel to run the vision testing equipment used in conjunction with the issuance of driver's licenses. The money necessary to provide such service by the Department of Revenue is contained in the Director's yearly budget and is appropriated on an annual basis

The Honorable Fred Williams

by the Legislature. For example, see H.B. 4, 83rd General Assembly, First Regular Session, which appropriated the funds necessary to finance these operations for the fiscal year beginning July 1, 1985.

Under these circumstances, it cannot be argued that the Missouri Department of Revenue has violated Article III, Section 38(a) of the Missouri Constitution. That section prohibits the General Assembly from lending or granting public money or property to private entities. Obviously, the intent behind this provision is to prevent the use of public money for a non-public purpose. Such is not the case here. The equipment, supplies, and personnel concerned are not being provided to a private entity but rather to a statutory agent of the State of Missouri for the purpose of carrying out certain statutory duties delegated to one of its officials, the Missouri Director of Revenue.

In our opinion, the practice of the Missouri Department of Revenue in furnishing its fee agents with certain equipment, supplies and personnel does not violate the state constitutional provisions against the granting of public money or property to any private person, association or corporation (Article III, Section 38(a)).

Very truly yours,


WILLIAM L. WEBSTER
Attorney General

Attachment



MISSOURI DEPARTMENT OF REVENUE

Post Office Box 311

JEFFERSON CITY

65105

JOHN ASHCROFT
GOVERNOR

PAUL S. MCNEILL, JR.
DIRECTOR OF REVENUE

AGENCY CONTRACT

This Agency Contract entered into by and between _____ (hereinafter referred to as the Fee Agent) and the Director of the Department of Revenue for the State of Missouri and his successors in office (hereinafter referred to as the Director of Revenue).

This appointment shall become effective at 12:01 A.M. on the _____ day of _____, 19____.

In exchange for an appointment as a Fee Agent by the Director of Revenue pursuant to Section 136.055, RSMo 1978, as amended, the Fee Agent agrees to the following terms and conditions.

1. The Fee Agent will act on behalf of the Director of Revenue for:
 - A. The sale of motor vehicle, trailer, chauffeur, and operator licenses, and for the sale of nondriver's identification cards (Chapters 301 and 302, RSMo 1978, as amended);
 - B. The collection of motor vehicle, trailer, and outboard motor title and license fees and penalties (Chapter 301, RSMo 1978, as amended);
 - C. The collection of state sales and use tax (Chapters 144 and 301, RSMo 1978, as amended);
 - D. The collection of city and/or county sales tax (Chapter 94, RSMo 1978, as amended);
 - E. The collection of motorboat title and license fees (Chapter 306, RSMo 1978, as amended).
2. The Fee Agent is responsible to provide:
 - A. Office space, office equipment and fixtures, and hours of operation, all subject to the approval of, and the continuing supervision of, the Director of Revenue as being adequate to perform the services herein stated.
 - B. Adequate parking facilities for customers.

- C. Adequate staff to promptly and efficiently care for the demands of business of the Fee Agent and to perform the services herein stated.
 - D. Adequate security for all license plates, permits and documents consigned to the Fee Agent.
 - E. A daily deposit to the credit of the State Treasurer of each day's collection of motor vehicle, drivers license and marine registration, with deposit slips forwarded to the Department of Revenue within 48 hours after the close of business.
 - F. A daily deposit to the credit of the Department of Revenue of each day's collection of city and/or county sales tax, with deposit slips forwarded to the Department of Revenue within 48 hours after the close of business.
 - G. A daily business register and summary which, with all substantiating documents, are to be forwarded to the Department of Revenue within 48 hours after the close of business.
 - H. Proof of the posting of a surety bond as part of the Fee Agent Group Bond Program for an amount deemed sufficient by the Director of Revenue to cover the collections of the fee office (generally computed for an average ten (10) day period).
 - I. A daily accounting of inventory expended and on hand, together with such exceptions as missing, defective, or incomplete sets of plates and/or tabs.
 - J. Personal attention and supervision of employees to ensure proper understanding of laws and procedures, and maintain a high level of courteous, efficient service to the public.
 - K. The maintenance of a Notary Public service in the Fee Agent's office for which no charge shall be made.
 - L. Maintenance of a copy of the statutes relating to the registration of motor vehicles, outboard motors, state sales and use taxes, city and/or county tax and the registration of motorboats in the Fee Agent's office.
3. The Fee Agent is expected to become completely familiar with each of the applicable Missouri statutes.

4. The Fee Agent is solely responsible for any uncollectable checks tendered in payment for licenses, fees, sales and use taxes, and city and/or county taxes.
5. The Director of Revenue agrees to furnish all necessary validation equipment, official forms, licenses, vision test equipment, and photographic equipment.
6. The Director of Revenue may schedule annual formal training for each Fee Agent in Jefferson City, or in a mutually agreeable location, to last for a period of up to seven (7) days during which time travel, lodging, and meal expenses of the Fee Agent are at the expense of the Fee Agent.
7. In performance of the above duties, the Fee Agent is entitled to collect from the party requiring services, a set fee, per transaction, as compensation in full for all services rendered as defined in Section 136.055, RSMo as amended.
8. In those instances where the Fee Agent is a member or representative of an organization (whether governmental or private, whether or not incorporated, and whether or not operated for profit), the Fee Agent shall be personally responsible and liable for the performance of the terms and conditions required of a Fee Agent by this contract or by statute.
9. It is understood and agreed that the Fee Agent serves solely at the pleasure of the Director of Revenue and may be dismissed any time for any reason.

Signed:

Fee Agent

STATE OF MISSOURI) SS
)
COUNTY OF _____)

Before me personally appeared _____ this

_____ day of _____,

19___, and offered his or her signature to this contract.

My Commission Expires:

Signed:

Director of Revenue by his Agent (Field Operations Bureau Manager)

STATE OF MISSOURI)
) SS
COUNTY OF COLE)

Before me personally appeared _____ this

_____ day of _____,

19___, and offered his or her signature to this contract.

My Commission Expires:
