

MERCHANT'S LICENSE - Authority of City to levy on Wholesale and
retail business

September 20, 1933

9-25



Rolla Creamery & Ice Company,
Rolla, Missouri

Gentlemen:

We acknowledge receipt of your letter as follows:

"We are a Missouri corporation manufacturing and selling butter, ice cream and ice, both wholesale and retail. After twelve years business without a Merchant's License, the City Council now expects to collect a Merchants' License from us. We maintain we should not be obliged to pay a license for the sale of products we manufacture. Please give us your opinion on this and oblige."

Section 7012 Revised Statutes of Missouri, 1929,
reads as follows:

"All license tax shall be regulated by ordinance and no license shall be issued until the amount prescribed therefor shall be paid to the City Collector and no license shall in any case be assigned transferred, etc."

Section 7046 Revised Statutes of Missouri, 1929,
reads in part as follows:

"The mayor and board of aldermen shall have power and authority to regulate and to license and to levy and collect a license tax on manufacturing and other corporations or institutions, etc."

In American Express Company v. City of St. Joseph,
66 Mo. 1. c. 680 the court said:

"It may be conceded that if it appeared that the power conferred was simply to license

and regulate the occupation or pursuit of express companies, it would not authorize the levying of a tax on the occupation unless it clearly appeared that such was the legislative intent in conferring it. But here the power to tax is expressly given

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a provision in the constitution of Louisiana declaring that all taxation 'shall be equal and uniform throughout the State,' even if it extends to municipal taxation, is not violated by a legislative provision authorizing the taxation by municipalities of callings, trades and professions, exercised within their limits."

In Franklin v. The National Insurance Company, 43 Mo.

l. c. 491, the court said:

"A license is imposed on shows, peddlers, auctioneers, dram-shops, etc., all of which taxes are in violation of the ad valorem principal, but not therefore unconstitutional. The taxes imposed are uniform as to the particular classes, but not in proportion to the taxes assessed on other property.

The constitution enjoins a uniform rule as to the imposition of taxes on all property, but does not abridge the power of the Legislature to provide for a revenue from other sources."

In City of St. Louis v. Bowler, 94 Mo. l. c. 634, in discussing whether an ordinance taxing trades, callings, etc., the court said:

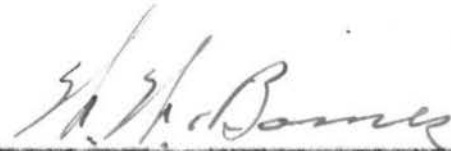
"The only prohibition of the Section (Section 3, Article X of the Constitution) being discussed is that which forbids inequality, favoritism, to be exercised in imposing taxes upon the same class of subjects. So long as this is not done, the constitution is not infringed, nor the rules of uniformity and equality violated."

Therefore in view of the decisions of the courts, upon constructions of statutes of the same import as the sections herein mentioned, this department holds that the Mayor and Board

Rolla Creamery & Ice Company #3.

of Aldermen, by ordinance, have the power and authority in cities of the third class to license and levy a tax upon a business such as yours, so long as they maintain uniformity and equality in doing so.

Yours very truly,



Assistant Attorney General

APPROVED

Attorney General.