

REVENUE:

Defining the term "revenue" relating to amount of money common council shall be required to appropriate for use of Police Department in Cities of the First Class.

5-21

May 14, 1934.

Honorable Orestes Mitchell,  
President, Board of Police Commrs.,  
Department of Police,  
St. Joseph, Missouri.



Dear Sir:

This department is in receipt of your letter of March 28, 1934, wherein you state as follows:

"The question has arisen between the Police Department and the City Administration as to the amount of money the Police Department is authorized to draw from the City to operate the Police Department. I call your attention to Section 6369, Revised Statutes 1929, which provides that the Board of Police are authorized to make requisitions from time to time upon the mayor, etc. for such sums as they deem necessary for executing their duties under the law. This Section of the Statutes also provides that the Common Council shall not be required to appropriate for use of the Police Department in any fiscal year an amount of money in excess of one-sixth of the 'revenue' for the year.

"The City Comptroller and City Council have taken the position that the word 'revenue' as used in this Section does not include anything but real and personal property tax. The City also has an income from occupation and merchants' taxes, tax on sales of gasoline, automobile license taxes and liquor licenses and income from other sources; practically all of which, under the ordinances, go into the general revenue

fund of the City. The gasoline tax, however, is divided; one-half to the street maintenance and repair fund and the other half to the general revenue fund of the City Treasury. It is the contention of the Board of Police Commissioners that the receipts to the general revenue fund of the City from these various sources are all revenue within the terms of the Statutes and that the Police Department should be entitled to participate therein so far as their needs require. We have been compelled to reduce our force, as well as salaries because of lack of funds.

"We, therefore, solicit your opinion as to whether or not the Police Department is entitled to participate in the revenue produced from the various miscellaneous taxes, such as above mentioned. In this connection, I call your attention to the decisions of the Supreme Court in State, ex rel Gas vs. Gordon, 266 Mo. 394, 181 SW 1016, and State, ex rel Thompson vs. Board of Regents, 305 Mo. 57, 264 SW 698."

Section 6369, R. S. Mo. 1929, provides that the Board of Police Commissioners are to ascertain the money necessary to manage the police force and further provides how the money is to be obtained. It reads as follows:

"It shall be the duty of said board, prior to the 25th day of April of each year, to estimate what sum of money will be necessary for each current fiscal year to enable them to discharge the duties hereby imposed upon them, and they shall forthwith certify the same to the common Council of such city, who are hereby required, in each monthly appropriation or ordinance of that fiscal year, to set apart and appropriate the one-twelfth part of the amount so certified, which sum shall at once be paid by the city treasurer to the treasurer of the board of police upon a warrant drawn by the president and countersigned by the comptroller: Provided, that if the said board shall be required to create an

extra police force, as provided herein, and the expense of such extra force be contemplated in their said estimate, they shall immediately certify the expense of such additional force to the common council, who are hereby required, as soon as possible, to set apart and appropriate the additional amount so required, agreeably to this section. The said board of police are hereby authorized to make requisition from time to time upon the mayor, auditor, treasurer, comptroller or other proper disbursing officer or officers of the corporation of such city for such sums as they may deem necessary for executing their duties under this article, and the sums so required shall be paid by said proper disbursing officer or officers out of any money in the city treasury not otherwise appropriated: Provided, that in no event shall a common council be required to appropriate for the use of the police board in any fiscal year an amount of money in excess of one-sixth of the revenue of such year; and provided, also, that the amount so required or drawn shall not exceed in any one year the amount certified as aforesaid to the common council for that year, including any additional amount which may have been ordered by said common council to be paid for or on account of any extra police force as hereinbefore provided; that the common council of the city shall have no power or authority to levy or collect any tax or appropriate and disburse any money for the payment of any police force other than that to be organized or employed under this article, and the power of the mayor and common council of such city to appropriate and disburse money for the payment of the police force to be organized or employed under this article shall be exercised as in this section directed, and not otherwise: Provided, further, that said police board shall not increase any salary and shall not increase the number of men on the force unless authorized so to do by the city

council; but it may reduce the number of men or officers, or both, at any time that it may think proper or necessary."

Section 655, R. S. Mo. 1929, provides additional rules for construing statutes and reads in part as follows:

"\*\*\*\*\*The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the Legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, \*\*\*\*\*."

In the case of State v. Gordon, 181 S. W. 1016, 1. c. 1021, 266 Mo. 394, the court said:

"As words when used by the people in their Constitution and by the Legislature in their statutes, are ordinarily to be construed to be used in their ordinary sense (Section 655, R. S. Mo. 1929) \*\*\*\*\* recourse must be had to the dictionaries. \*\*\*\*\*"

"From these, we find the word 'revenue' means "the annual yield of the taxes, excises, customs, duties, rents, etc. which a nation, state or municipality collects and receives into the treasury for public use." (Webster's International Dictionary.)

"The total current income of government, however derived, subject to appropriation for public uses." (Standard Dictionary.)

"The annual income of a state derived from the taxation, customs, excise, or other sources and appropriated to the payment of the national expenses." (Century Dictionary.)

54 Corpus Juris, 743, collates and summarizes the various definitions of "revenue" when used in the sense of "public income" in the following manner:

"\*\*\*\*\* 'Public revenue' has been variously defined as meaning public income of any kind; the annual and current income of the state, however, derived, which is subject to appropriation for general public uses; the annual income of a state derived from the taxation, customs, excise, or other sources and appropriated to the payment of the national expenses; the annual or periodical yield of taxes, excise, customs, duties, rents, etc., which a nation, state, or municipality collects and receives into the treasury for public use; the annual produce or yield of taxes, excise, customs, duties, rents, etc., which a nation, state, or municipality collects and receives into the treasury for public use; the current income of the state from whatsoever source derived which is subject to appropriation for public uses; the income of the state or nation derived from the duties, taxes and other sources for the payment of the national expenses; the income which a state collects and receives into its treasury, and is appropriated for the payment of its expenses; the total current income of a government, however, derived, subject to appropriation for public uses."

In the case of State ex rel. v. Ewing, 23 Kans. 708 l.c. 713, the Court said:

"The act of 1879 is entitled 'An act to provide revenue,' etc. Now how broad is the term 'revenue'; and what may be included in such a title? Does it mean simply funds raised by taxation, and is the levying of taxes all that may be included? Such would seem to be the views of the counsel for the state, but we cannot think them correct. One of the definitions given by Webster of the term is, 'the annual produce of taxes, excise, customs, duties, rents,

etc., which a nation or state collects and receives into the treasury for public use.' The word is broad and general, and includes all public moneys which the state collects and receives from whatever source and in whatever manner. The general funds of this state are collected from taxes, but the legislature might, in an act with such a title -- at least, so far as any question of the form of the legislation is concerned -- enact that they be collected from licenses, or from the sale of lottery tickets, or it might unite and enact that part might be collected from one source and in one manner, and the rest from another source and in a different manner."

In the case of State v. Board of Regents, 264 S.W. 698, 1.c. 700, 305 Mo. 57, the Court said:

"By revenue, whether its meaning be measured by the general or the legal lexicographer is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required to be paid into the treasury, it becomes revenue or State money; its classification as such being dependent upon specific legislative enactment, or, as aptly put by the respondent, state money means money the state, in its sovereign capacity is authorized to receive, the source of its authority being the Legislature. \*\*\*\*\*"

In the case of State v. Gordon, 181 S. W. 1016, 1.c. 1020, 266 Mo. 394, Ann. case 1918 B. 191, the Court said:

"Clearly the word 'revenue' is broader than and includes taxation, as well as all other sources of municipal income. Revenue may be said to be the genus, while taxation is but a species. \*\*\*\* This excludes such income as the Constitution, or any permanent existing law, may specifically devote to a special purpose, in contradistinction to a general public use, or which is not required to be paid into the state revenue fund but into a special fund, e. g., the collateral inheritance tax, specifically collected for the support of the State University; and its departments \*\*\*\*\*; the money derived from license fees on motor vehicles; fees paid into the state treasury to the credit of the 'insurance department fund'; and others of similar sort.\*\*\*\*\*"

#### CONCLUSION.

We are of the opinion, as stated in State v. Gordon and Section 655, supra, that words and phrases used in a statute must be construed in their plain, ordinary and usual sense, and that recourse must therefore be had to the dictionaries. From these and various definitions collated and summarized in Corpus Juris, supra, we found that the word "revenue" means the annual and current yield, or income of a government, national, state or municipal, however derived or collected and which is received or appropriated into the public treasury for public uses.

As stated in State v. Ewing, supra, " \*\*\*\*the word is broad and general and includes all public moneys which the State collects and receives from whatever sources and in whatever manner \*\*\*\*."

The above case is cited, and its definition of the term "revenue" is quoted with approval in the case of State v. Gordon, supra. The latter case says, "clearly the word "revenue" is broader than and includes taxation, as well

as other sources of municipal income. Revenue may be said to be the genus while taxation is said to be the species\*\*\*\*. This excludes such income as the Constitution, or any permanent existing law, may specifically devote to a special purpose, in contradistinction to a general public use or which is not required to be paid into the State Revenue Fund but into a special fund. \*\*\*\*"

In light of the foregoing, we are of the opinion that the word "revenue" as used in Section 6369, supra, is not limited to real or personal property tax but includes all sources of municipal income which is required by ordinance or any permanent existing laws and to be paid into the general revenue fund.

As stated in State v. Board of Regents, supra, "this current income may be derived from various sources, as our numerous statutes attest, but no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money. \*\*\*\*"

Of course, if any income derived by the City is specifically devoted to a special purpose in contradistinction to a general public use or which is not required to be paid into the general revenue fund of the City Treasury, but into a special fund, as for example a street maintenance and repair fund, then it is not to be included as "revenue" within the meaning of Section 6369 supra; but any and all income derived by the city from occupation and merchants' taxes, taxes on sales of gasoline, automobile license and liquor license taxes, or from any other source and which by provision of ordinance is required to be paid in whole or in part into the general revenue fund of the city is to be included within the meaning of the above term.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS  
Assistant Attorney-General.

ROY McKITTRICK  
Attorney-General.

MW:WOS/afj