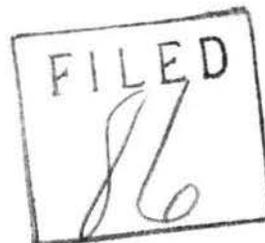


HOUSE BILL NO. 5 (Sales Tax) Receipts from sales of admission to football games and other athletic events not subject to tax when same are conducted for and on behalf of colleges, universities and high schools.

9.26

September 21, 1934.



Honorable Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Attention: Mr. G.H. Bates,
Chief Clerk

Dear Sir:

This department acknowledges receipt of your letter of September 8, which is as follows:

"Now that the football season is approaching, the question arises as to whether or not admissions charged for University, College and High School football games are subject to the Missouri Retailers' Occupation Tax.

Since it has been ruled that college papers are subject to the Mo. R.O. Tax, it also appears to me that we will have to hold admissions to football games within the act. However, I would like to have your opinion on the subject."

Section 2A of House Bill No. 5 reads as follows:

"For the privilege of a person engaging in the business of rendering the services, furnishing or selling the substances and things hereinafter in this section designated or defined *****
(a) Sales of admission tickets, cash admissions, charges and fees to places of amusement, games and athletic events.*****"

Section 1, subdivision (c) provides:

"'Business' includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect."

In considering the question presented in your request for an opinion, we will consider its two principle elements, (a) are football games and other athletic events conducted by universities, colleges and high schools of such a nature that it may be concluded that they are conducted as a business, and (b) are they conducted for the benefit, gain or profit of an individual or a corporation?

It must be conceded that athletic events in recent years have become prominent, if not too prominent, in all colleges and universities; however, the primary object of a university or college is to educate and improve the mind and athletic events are merely incidental thereto. We are therefore of the opinion that no college or university is engaged in the business of conducting athletic events, and accordingly we dispose of this phase of your inquiry.

It may be said that colleges and universities conduct athletic events for the gain and benefit of such institutions and in recent years the receipts from admissions to athletic events have played an important part in the financial structure of colleges and universities; however, conceding that to be true, no individual gains financially thereby. Universities are maintained by the State - colleges chiefly by religious denominations, being more or less charitably maintained. We are therefore of the opinion that the athletic events mentioned in your letter are not conducted for gain or profit within the meaning of the Act.

A case bearing on this subject, but which we must differentiate in order to make clear our position, is that of *Radcliffe v. Query*, 150 S.E. 352. In this case it is clear that a Chautauqua is conducted for gain and profit as a business, while in the instant case colleges and universities are not engaged in the business and no individual or individuals profit thereby. The Court said:

"On hearing the demurrer to the complaint in the above entitled action I am of the opinion that the statute (35 St. at Large, p. 139) levies a tax of 10 per cent. on any person, firm, or corporation operating a place of amusement, based on the admission charges paid him, when the admissions were to the benefit of any individual. The statute is broad enough to include

all classes of public exhibitions, such as are usually conducted on a stage for the observation and amusement of the public. 26 R.C.L. 699, to 'amuse' is to occupy the attention with something pleasing; an 'amusement' is anything that amuses, as an entertainment or spectacle. Entertainment being largely mental, so an 'attraction' is that which attracts or draws a pleasing or alluring object--so we may say the play was the attraction. A 'Chautauqua' is a series of meetings of an educational character in imitation of the Chautauqua assembly, and its literary and scientific circle. The contract attached to the complaint as an exhibit shows that plaintiff undertook to furnish to local committee of citizens in different towns in this state, a three-day Chautauqua with two attractions each afternoon and evening, with a change of attractions each day, upon the committee furnishing a site for a tent, ushers, and ticket collectors, and paying any license fee or tax, if required by law in consideration of the committee paying plaintiff \$550--as compensation for the 'Chautauqua'; the committee to charge \$2 for each adult season ticket, and 75 cents for single admissions to all performances. The Chautauqua was a place of amusement operated by the plaintiff for profit, and the \$550 was paid to him for admissions to the place of amusement and is subject to the tax paid by him."

For the reasons above stated, we are of the opinion that the gross receipts derived from the sale of admissions to football games and other athletic events conducted by colleges, universities and high schools are not subject to the tax when such games are conducted for and on behalf of the college, university or high school, and no return should be made to the State Auditor. However, we call your attention to the fact that this opinion does not apply to professional football games and athletic events which are not of a charitable nature and which are conducted

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purely for gain or profit to an individual, group or association.

We note you call attention to our former opinion regarding college papers being subject to the tax. We direct your attention to the fact that in most instances college papers are conducted for gain and profit, for instance the "University Missourian."

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

(Acting)
Attorney General

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