

LICENSES: Where statute or ordinance fails to provide for collection of license tax, proper method of collection is by an action at law as for debt.

6-14
June 13, 1935.



Mr. Wm. Bradford
Mayor
Belton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"COPY OF ORDINANCE NO. 221

"BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BELTON AS FOLLOWS:

"That there is hereby assessed and levied a tax of thirty cents each against all poles belonging to the Telephone Companies and Electric Light Companies, and all other companies having poles in the streets and allies of the City of Belton (not otherwise taxed); the count to be made by any suitable person that may be designated by the Mayor with the approval of the Board of Aldermen to make such count and to make oath that the same is a true and accurate count of said poles. And the Council may provide to pay the person so making the count. The aforesaid tax shall be due and payable on the first day of July each year hereafter at the time when other such taxes are collected.

"All ordinances or parts of ordinances in conflict with this ordinance are hereby declared repealed.

"Duly passed by the Board of Aldermen at its regular meeting this 4th day of September, 1933.

"Signed

" W. P. Houston, Mayor

" Roy C. Idol, City Clerk."

"Attorney General:

"Will you please furnish opinion regarding the enforcement of the above ordinance, as some of the parties using our streets for their poles failed to pay for same.

"Kindly address me Wm. Bradford, Mayor, Belton, Missouri."

If the above ordinance is an attempt to levy an ad valorem tax against the property of telephone and electric light companies, it would be clearly unconstitutional. We therefore assume, for the purpose of this opinion, without passing upon the question, that the above ordinance is the valid exercise of the city's right given by Section 7046, R. S. Mo. 1929 to license and regulate certain businesses and occupations. We therefore proceed to answer your question as to the method of collection of said tax when the parties, against whom it is assessed, fail to pay same.

Under the provisions of Section 7001, R. S. Mo. 1929, cities of the fourth class, of which Belton is a member, may provide by ordinance for the levy and collection of all taxes and licenses and provide a penalty for failure to pay same. Said section reads as follows:

"The board of aldermen shall, from time to time, provide by ordinance for the levy and collection of all taxes, licenses, wharfage and other duties not herein enumerated, and for neglect or refusal to pay the same, shall fix such penalties as are now or may hereafter be authorized by law or ordinance."

You failed to state in your letter whether the City of Belton has provided by ordinance for the collection of said tax or provided any penalty for failure to pay same. We therefor assume that it has not. The statutory remedies for the collection of ad valorem taxes are not applicable to license taxes unless expressly made so by statute or ordinance.

In the case of McIninch v. Schall, 141 S. W. loc. cit. 446-447, the Court said:

"(2) But though a tax, the courts of this state always have drawn distinctions between a strictly occupation or license tax and an ad valorem property tax (State v. Alt, 224 Mo. 493, 123 S. W., loc. cit. 885); and statutory remedies for the collection of ad valorem taxes are not applicable to license taxes unless expressly made applicable in the statutes or ordinances relating to the latter class. We, therefore, dismiss as inapplicable 'general ordinance No. 24' introduced in evidence on the ground that it relates only to the collection of ad valorem taxes."

It is a well-settled principle of law, however, that, where a statute or ordinance fails to provide a method for the collection of a license tax, an ordinary action at law will lie for the collection thereof.

In the case of City of St. Louis v. United Railways Company of St. Louis, 174 S. W., loc. cit. 93, the Supreme Court speaking through Walker, J. said:

"(13) The defendant, in addition to the foregoing, contends that the levying of the tax under the ordinance does not create a debt; that the ordinance provides an exclusive remedy therein for its enforcement, which remedy is wholly penal, and cannot therefore be enforced in an action for a debt. From the early case of Carondelet v. Picot, 38 Mo. 125, to State ex rel. v. Trust Co., 209 Mo. loc. cit. 490, 108 S. W. 97, it has been held that a tax is not a debt or in the nature of a debt; that it is not founded on contract and operates in invitum; and that, if a remedy is specified for the collection of a tax, it will be held to be exclusive, where no other is provided. This holding, however, should be construed in the light of the modifying rule that, where a statute or ordinance wholly fails to provide a remedy for the enforcement of the payment of taxes, the right arises to institute a civil suit

at law therefor. This doctrine has found appropriate lodgment in many cases in this jurisdiction in which the matter of the collection of taxes has been discussed. In the Picot Case, supra, the Court said in substance: If a tax be imposed and no method provided for its recovery, a resort to legal proceedings becomes a matter of necessity, where the Legislature has failed entirely to indicate a mode or manner of collection.

"In State v. Severance, 55 Mo. 378, this court said, where a statute authorized the taxation of railroads and designated no particular manner in which the towns or cities where the taxes are to be levied might proceed to collect same, a resort might be had to an ordinary action at law to enforce payment. The rule being announced generally that, where a statute gives a right and no remedy, resort may be had to the usual remedy applicable to the case.

"In Phelps v. Brumback, 107 Mo. App. loc. cit. 25, 80 S. W. 680, the court says:

"If the statute authorizes the imposition of a tax but prescribes a remedy for its collection, the usual 'action' for a debt may be had."

"In State ex rel. v. Dix, 159 Mo. App. 573, 141 S. W. 445, the Court said:

"Where the statute or ordinance * * * fails to provide a remedy, an implication arises that the legislative body intended that a civil suit at law would lie for the collection of the tax; but, where an adequate remedy is provided, the implication must be the other way."

And further at loc. cit. 94, the Court concluded:

"Regardless, therefore, of whether taxes are debts in the sense of ordinary money obligations growing out of contracts,

they are in the nature of debts arising out of and necessarily incident to the duty the citizen owes as his portion required to be contributed to the support of that intangible thing called the body politic; and the government, whether it be state or municipal, has the same right to enforce that duty as if it were a debt, and in the same way. State ex rel. v. Trust Co., 209 Mo. 490, 108 S. W. 97; Greeley v. Bank, 98 Mo. 458, 11 S. W. 980; Perry v. Washburn, 20 Cal. loc. cit. 331; People v. Seymour, 16 Cal. 340, 76 Am. Dec. 521; Sav. Bank v. U. S. 19 Wall. 227, 22 L. Ed. 80."

CONCLUSION.

As stated above, we are not passing upon the validity of the ordinance in question but only on the method of collection of a license tax which we assume, for the purpose of this opinion, is constitutional. We therefore rule, in view of the above authorities, that where an ordinance imposes a valid license tax but fails to provide a method of collection therefor or a penalty for the failure to pay same, the proper method of collection is by an ordinary action at law as for debt.

Yours very truly,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney-General.

JET/afj