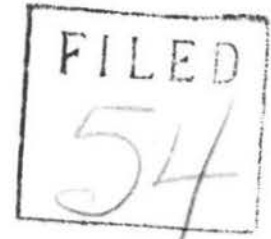


TAX ON DOGS: Construction Section 12874b, House Bill 149, 1937
Session Acts. Penalty on dogs running at large without
payment of taxes not amended by House Bill 140.

Spetember 18, 1937 ^{10/9}



Mr. Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

This Department wishes to acknowledge receipt of your
request for an opinion which is as follows:

"Please give me a ruling on the follow-
ing situation:

The last legislature passed certain
laws relative to a tax on dogs. Please
tell me how far back can we go to compute
stock losses which would come under this
law. Are such losses payable if occurred
only after September 6th, 1937, or as set
out in Section 12874b of such acts at
the time running from March 1st, 1937.

Also what provisions are to be made for
the enforcement of this law in the event
parties fail to comply therewith in the
purchase of dog license."

Three sections of Article XII, Chapter 88, of the 1929
Statutes were amended by House Bill 140, 1937 Session Acts, among
which is Section 12874b, which is as follows:

"The county court shall between the 1st
and 15th days of March of each year here-
after meet in session to consider and
examine said applications and affidavits
covering losses over a period of one year,
which said year shall be from the 1st of
March of the year prior to the meeting of
said court to the last day of February of
the same year on which it meets. The

court shall examine carefully each application and affidavit which has been filed before the first day of March, and after hearing all evidence in the matter shall pass such judgment as the Court may deem equitable. Whenever the county court meets pursuant to the provisions of this article each member shall receive his mileage and per diem out of the county dog license fund."

This section means that the County Court shall meet in session under Section 12874b. of House Bill 140, between the 1st and 15th day of March 1938, and each year thereafter, to consider and examine applications and affidavits covering losses (live stock or poultry) over a period of a year, which said year shall be from the 1st day of March of the year prior to the meeting of the Court to the last day of February of the same year on which it meets, said year above referred to beginning March 1, 1938, to the last day of February 1939, and each year thereafter.

The bill went into effect September 6, 1937, there being no emergency clause, and the Court could only examine applications and affidavits covering that part of a year from that date to the period when the Court meets in March 1938.

To hold differently, i. e., that the Court had to examine applications and affidavits covering a full year prior to the time of its setting in March 1938, would make the law as to the first year retroactive.

In the case of Supreme Council vs. Heitzman, 140 Mo. App. 1. c. 111, the Court in passing on this question said:

"Statutes will not be held to affect transactions which antedate them, unless the intention of the Legislature for them to retroact is clear, and especially is this the rule when the opposite construction would render a statute unconstitutional and void.

CONCLUSION

Therefore, it is the opinion of this Department that applications and affidavits covering losses of live stock or poultry by being injured or killed by dogs, are for a period beginning September 6, 1937, to the last day of February 1938.

II.

House Bill 140 repealing Sections 12872, 12873 and 12874, Article XII, Chapter 88 of the 1929 statutes, did not embody any enforcement or penal clause, but the penal clause is in (unamended) Section 12880 in said Article XII, 1929 Statutes, which is as follows:

"Every owner of a dog and every person who shall suffer or permit a dog to remain upon such premises under his immediate control without having caused such dog to be listed and the tax thereon to be paid as provided for by this article shall be guilty of a misdemeanor, and on conviction thereof fined not less than five dollars nor more than twenty-five dollars. Provided, that none of the provisions of this article shall apply to cities which now have or may hereafter have a population of 300,000 inhabitants or more."

Also, Section 12877 in Article XII supra, provides for the impounding of dogs running at large without collars marked as provided in said article.

CONCLUSION

It is therefore the opinion of this Department that House Bill 140, 1937 Session Acts, being an amendment of a part of Article XII, Chapter 88, 1929 Statutes, and including no provision for a penalty for a failure to pay a dog tax, such penalty would be fixed by said Article XII, Chapter 88, 1929 Statutes.

Respectfully submitted,

APPROVED:

S. V. MEDLING,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General