

TAXATION:

Damages on dog tax must be paid as proved
from March first until March first.

November 18, 1938

11-19

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



Dear Sir:

This will acknowledge receipt of your opinion
request of November 9, 1938, which reads as follows:

"In the election yesterday the voters of this County passed the Dog Tax Proposition. Please advise me whether or not that when the County Court meets between the 1st and 15th of March, 1939, as designated in Section 12874-b, Laws of 1937, page 224, are they to consider the claims for stock damage for one year prior to that date or from the date of the passage of this law.

Please give me the form for the passage notice that the County Court is required to give upon the passage of this law, as set forth in Laws of 1921, page 679."

Article 12, Chapter 88 of the Revised Statutes of Missouri 1929, applies to the assessment of a tax upon dogs being subject to the local option proviso as set out in Section 12881 in said Chapter. The proviso in Section 12881 reads as follows:

"Provided that upon the filing of petition signed by one hundred or more householders of any county and presented to the county court at any regular or special session thereof more than thirty days before any general election to be had and held in said county, it shall be the duty of the county court to order the question, as to whether or not there should be adopted the law, creating a license tax on dogs, submitted to the qualified voter, to be voted upon at the next election. Upon the receiving of such petition it shall be the duty of the county court to make an order as herein recited, and the county clerk shall see that there is printed upon all ballots to be voted at the next election the following:

For creating a license tax
on dogs---

Yes.

No.

(Erase the word you do not
wish to vote.)

The returns of said election upon said subject shall be opened, canvassed and certified, as the returns for general elections. If the majority of the votes cast upon the subject be in favor of license tax on dogs, the county court shall spread the result of such election upon its records and give notice thereof by publication in some newspaper printed and published in such county and such law shall become operative from the time such publication is made.
(Laws 1921, p. 679, Section 10.)

Sections 12872, 12873, and 12874 of Article 12, Chapter 88 R. S. Mo. 1929 was amended by the Session Laws of 1937 page 224 by enacting new sections known as 12872, 12873, 12874, 12874A, 12874B, and 12874C. The original

chapter 88 of the Revised Statutes of Mo., 1929 did not contain the provisions for the payment of loss of live stock or poultry caused by dogs. The 1937 Session Laws provided for the payment of the actual value of the live stock or poultry killed by dogs out of the fund collected by a tax upon dogs. The amendment of the Session Laws of 1937 did not amend the local option proviso as set out in Section 12881 R. S. Mo. 1929. Under Section 12881, the law did not become effective until the local option vote was taken and the tax created by an election held at any general election.

Section 12874A Session Laws of 1937, page 226 reads as follows:

"No owner or custodian of live stock or poultry which has been injured or killed by dogs shall be entitled to receive any portion of the county dog license fund unless within ten days after suffering such loss or damage he, with two other credible freeholders of the county, not kin to him by blood or marriage or not in his employ, make written application supported by affidavit to the county clerk on blanks furnished by the county clerk, stating: (1), that he is a resident of the State of Missouri, and that he has resided in said county for more than thirty days next preceding the date of the injury or killing of his live stock or poultry; (2), that he was the owner or custodian on said date of said live stock or poultry; (3), the legal description of the premises on which said live stock or poultry was injured or killed; (4), a complete description as to the number, weight and color of said live stock or poultry; (5), the market value thereof on the date of such injury or killing. The county clerk shall file all such applications and affidavits so received by him to be examined and passed upon by the county court.

Provided, that no claim shall be considered or paid for the destruction of live stock or poultry by a dog or dogs belonging to the owner of said live stock or poultry."

Section 12874B Session Laws of Mo. 1937, page 226 reads as follows:

"The County court shall between the 1st and 15th days of March of each year hereafter 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."

In your request you ask whether or not the year referred to and designated in Section 12874B should be considered the year prior to the 1st day of March when the County Court meets in accordance with this section or whether it means one year prior to the date of the passage of this law. Section 12874B is not ambiguous and the statute plainly reads:

" * * * which said year shall be from the 1st of March * * *"

Sections of a chapter of the statutes should be read together and it will be noticed that Section 12874A Supra, provides that the loss or damage caused by dogs should be applied for, within ten days after suffering such loss or damage. It is obvious that no claim could be made on account of injury or damage sustained for a whole year previous to the first of March of 1939, at which time the county court shall meet for the examination of applications for damages under this chapter.

The law will not be in effect until the proper publication has been made by the county court as to the results of the election in accordance with Section 12881 R. S. Mo. 1929. Section 12874B Supra is very plain and not ambiguous. According to 59 C. J. page 952 it is said:

"The intention of the Legislature is to be obtained primarily from the language used in the statute. The court must impartially and without bias review the written words of the act, being aided in their interpretation by the canons of construction. Where the language of a statute is plain and unambiguous, there is no occasion for construction, even though other meanings could be found; and the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning." citing Gendron v. Dwight Chapin & Co., (App.) 37 S. W. (2d) 486; Betz v. Kansas City So. R. Co., 284 S. W. 455, 314 Mo. 390; Grier v. Kansas City, C. C. & St. J. Ry. Co., 228 S. W. 454, 286 Mo. 523.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the applications for damages caused by dogs by the injury or killing of live stock or

poultry, must be heard during the period beginning the first of March and ending the fifteenth day of March each year and that the only applications to be examined would be applications for damages accrued from the first of March of the previous year to the last day of February of the year at which time the meeting of the County Court is held for the purpose of such examination. It was not the intention of the legislature that the period of one year should be a period of a year prior to the time of the passage of the law. The passage of the law and the time that it should take effect would be the date of the publication of the results of the election by the County Court.

In view of the fact that the law was not effective for one whole year previous to the first of March, 1939, and in view of the further fact that the claim must be filed within 10 days from the time of the loss or damage, it is the opinion of this department that the only applications that can be made for the first meeting of the County Court would be from the time of publication of the results of the election to the first day of March, 1939.

The following form for the publication of the results of the election would notify the owners of all dogs that the law is in effect.

NOTICE

State of Missouri) ss
County of Pike)

It is hereby certified that at the general election held on the proposition whether or not a license tax should be assessed on dogs, in Pike County, which election was held on the 8th day of November, 1938, in said County of Pike by the qualified voters thereof, the proposition for creating a license tax on dogs was carried by a majority of the votes cast upon the subject.

Now, therefore, the County Court of said County of Pike, pursuant to Section 12881 R. S. 1929, have spread the results of such election upon its records and hereby give notice thereof and proclaim that all dogs in Pike County are now subject to tax as set out in Section 12873 of the

Mr. Edward V. Long

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Session Laws of 1937, page 225.

In witness hereof, the court has caused its seal to be hereunto affixed at the clerks office in said County of Pike this _____ day of November, 1938.

(Seal)
Attest

County Clerk

Judge of County Court

Judge of County Court

Judge of County Court

Respectfully submitted,

W. J. BURKE,
Assistant Attorney Gen.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

WJB:WW