

TAXATION:
CHAIN STORES:

Section 3 of House Bill No. 34 for the
Sixtieth General Assembly is constitutional.

March 1, 1939

3/2



Honorable J. W. Farley
Representative
Platts County
Jefferson City, Missouri

Dear Sir:

This is in response to yours of the first request-
ing an opinion from this department on the question of
whether or not section 3, on page two, of House Bill
No. 34 is constitutional. This section is as follows:

"The license tax for said business de-
scribed in this act levied upon the
store or stores operated in the State
of Missouri shall be based on the num-
ber of stores or mercantile establish-
ments included under the same general
management, supervision, ownership or
control, whether operated in this state
or not, and shall be fixed and graded
as follows, to-wit:

"(1) Upon stores or mercantile estab-
lishments operated in this state and
belonging to a chain or group having a
total of not more than ten stores, the
annual license shall be ten dollars
for each such store operated in this
state.

"(2) Upon stores or mercantile estab-
lishments operated in this state and
belonging to a chain or group having a
total of more than ten stores, but not

more than thirty-five stores, the annual license shall be fifteen dollars for each such store operated in this state.

"(3) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than thirty-five stores but not more than fifty stores, the annual license shall be twenty dollars for each such store operated in this state.

"(4) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than fifty stores but not more than seventy-five stores, the annual license shall be twenty-five dollars for each such store operated in this state.

"(5) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than seventy-five stores but not more than one hundred stores, the annual license shall be thirty dollars for each such store operated in this state.

"(6) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than one hundred stores but not more than one hundred twenty-five stores, the annual license shall be fifty dollars for each such store operated in this state.

"(7) Upon stores or mercantile establishments operated in this state and

belonging to a chain or group having a total of more than one hundred twenty-five stores but not more than one hundred fifty stores, the annual license shall be one hundred dollars for each such store operated in this state.

"(8) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than one hundred fifty stores but not more than one hundred seventy-five stores, the annual license shall be one hundred fifty dollars for each such store operated in this state.

"(9) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than one hundred seventy-five stores but not more than two hundred stores, the annual license shall be two hundred dollars for each such store operated in this state.

"(10) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than two hundred stores, but not more than two hundred twenty-five stores, the annual license shall be two hundred fifty dollars for each such store operated in this state.

"(11) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than two hundred twenty-five stores but not more than two hundred fifty stores, the annual license shall be three hundred dollars for each such store operated in this state.

"(12) Upon stores or mercantile establishments operated in this state and

belonging to a chain or group having a total of more than two hundred fifty stores but not more than two hundred seventy-five stores, the annual license shall be three hundred fifty dollars for each such store operated in this state.

"(13) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than two hundred seventy-five stores but not more than three hundred stores, the annual license shall be four hundred dollars for each such store operated in this state.

"(14) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than three hundred stores but not more than four hundred stores, the annual license shall be four hundred fifty dollars for each such store operated in this state.

"(15) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than four hundred stores but not more than five hundred stores, the annual license shall be five hundred dollars for each such store operated in this state.

"(16) Upon stores or mercantile establishments operated in this state and belonging to a chain or group having a total of more than five hundred stores, the annual license shall be five hundred fifty dollars for each such store operated in this state."

March 1, 1939

In your letter you state that this bill is a copy from the chain store law of the State of Louisiana. We do not find where the Missouri courts have passed on a similar act, but we find that the Supreme Court of the United States in the case of Great Atlantic and Pacific Tea Company v. Grosjean, 301 U. S. 410-412, and 81 L. ed. 1193 held as follows as to the constitutionality of such an act:

"A state statute which imposes a chain store tax graduated upon the basis of the number of stores included under the same general management or ownership, whether operated in the state or not, does not arbitrarily and unreasonably discriminate in favor of local as against national chains."

"A state statute which imposes a chain store tax graduated upon the basis of the number of stores included under the same general management or ownership, whether operated in the state or not, does not contravene the constitutional requirement of due process by imposing a tax upon property or privileges possessed or enjoyed by the taxpayer beyond the borders of the state."

"In the exercise of its police power the state may forbid, as inimical to the public welfare, the prosecution of a particular type of business or regulate a business in such manner as to abate evils deemed to arise from its pursuit."

"Whatever a state may forbid or regulate it may permit on condition that a fee be paid in return for the privilege, and such a fee may be exacted

Hon. J. W. Farley

- 6 -

March 1, 1939

to discourage the prosecution of a
business or to adjust competitive
or economic inequalities."'

Since House Bill No. 34 proposes the same legislation
as the Louisiana Bill which has been passed on by the United
States Supreme Court, then this department is of the opinion
that the provisions of the bill to which you refer in your
request are constitutional.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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