

DOG TAX:  
ANIMALS:

County dog tax once submitted to voters of  
county cannot be resubmitted.

May 13, 1939

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Mr. G. Derk Green  
Prosecuting Attorney  
Linn County  
Linneus, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"Under Article 12, Chapter 88 of the 'Revised Statutes of 1929,' a petition was presented and the people of Linn County voted in favor of creating a license tax on dogs in this county.

"That is now being made effective by the officers, enforcing the provisions of that chapter. Some persons contend that they were misinformed of the work of this law at the time of the election and would like now to obtain a vote of the people on the question of taking Linn County out of the effect of the law.

"I have found no way in which they can obtain a vote on this or submit it to the voters for reconsideration. Please advise me if it is possible for vote to be had upon this, and if so the method to obtain the same."

Article XII, chapter 88, R. S. Missouri 1929, amended Laws of Missouri, 1937, page 224, provides for a county dog tax to be determined by local option.

Section 12881 of the article provides in part 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 followings:

"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."

The question presented by your request is when the license tax on dogs has once been adopted by a county is there any way in which the question may be again submitted to the voters to determine whether the license tax law should be in effect.

While the "county dog tax law" is the law of this state, still its operation is "suspended in the several counties of the state until a majority of the legal voters of any county should decide, at a general or special election, to enforce the same in such county." Welch v. The Hannibal Ry. Co., 26 Mo. App. 358. Once the law has been adopted it then occupies the status the same as any other statutory enactment of the State Legislature.

There is nothing in the county dog tax law providing for a resubmission of this question. Moreover, the form of the ballot as given in Section 12881, supra, is:

"\* \* \* \* \*  
For creating a license tax on dogs--

Yes.

No.

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

This form could not be used to repeal, reject or suspend the law which had already been adopted. The ballot form only provides for voting on the question of "creating" a license tax.

Other "local option" statutes have provided for a resubmission of the question. Section 7244, R. S. Missouri 1909, dealing with the liquor local option provided that the question could not be submitted within four years next after the election.

The section dealing with the election to determine whether animals shall be restrained from running at large in the county provides that such election shall be called

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for the purpose of submitting to the voters the question of "enforcing, in such county, the provisions of this article." Section 12805, R. S. Missouri 1929.

The form of the ballot in such election as given in Section 12806, R. S. Missouri 1929, is as follows:

"For enforcing the law restraining  
(insert the name of animals in petition)  
from running at large;  
'against enforcing the law restraining  
(insert the name of animals in petition)  
from running at large.'"

The wording of the above ballot would allow the voters, on resubmission, to repeal or suspend the operation of the law by voting "against enforcing the law restraining animals from running at large."

In view of what has been said above, it will be seen that when a county dog tax law has once been adopted by a county it then becomes a legislative enactment which can only be repealed or amended by the legislature. We do not mean to hold that the legislature itself could not allow the counties to vote again on whether the dog tax law should be in force in the county but only hold that as the law stands now they have made no such provision.

CONCLUSION.

It is, therefore, the opinion of this department that once the county dog tax law has been adopted in any county, then such question cannot be again submitted to the voters as to whether such law shall be repealed, suspended or not be in effect.

Respectfully submitted

APPROVED:

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