

COUNTIES: May not impose a tax on skating rinks under Section 14323, R. S. Mo. 1929, unless performances or exhibitions of professional skill are given.

July 14, 1939

Mr. Charles E. Hassett
Prosecuting Attorney
Henry County
Clinton, Missouri



Dear Mr. Hassett:

We acknowledge your letter of July 8th, as follows:

"The County Court of Henry County has been levying a tax at the rate of seventy-five cents per day upon skating rinks in this county on the theory that they are public exhibitions within the meaning of Section 14323, R. S. 1929. There have been some objections to the assessment of this tax on the part of the skating rink proprietors and at the request of the County Court I am seeking your opinion as to their right to levy such a tax.

You will note that Section 14327, relating to counties having a population of fifty thousand or more provides specifically that such a tax may be collected on roller rinks. There is no specific statement of this nature in Section 14323 which applies to all counties of the state. It occurs to me that it could be asserted in as much as 14237 permits a tax on roller rinks, 'or any other kind of public exhibitions' that this is a legislative declaration that roller rinks are public exhibitions and that therefore a tax may be levied against roller rinks in counties of this size as being public exhibitions within the meaning of 14323.

We would appreciate an opinion from your office with respect to (1) the power of the court to assess such a tax, and (2) the reasonability of the amount of seventy-five cents a day. The court has not set a monthly or annual rate of taxation and would like your suggestion as to whether or not they should do so."

Henry County, according to the last decennial census, contains a population of 22,931.

Section 14323, R. S. Mo. 1929, provides that:

"The county courts of the several counties in this state are hereby authorized to impose from time to time, by an order or orders entered of record, such tax as they may deem proper and reasonable upon all public theatrical and minstrel performances, shows and circuses, or any other public exhibition in said several counties: Provided, that nothing in this section shall be so construed as to apply to any educational, religious or charitable exhibition."

The first question to be determined is whether the words "public exhibition" are broad enough to include a skating rink so as to permit the imposition of a tax by the county court under Section 14323, supra.

37 C. J., Section 15, p. 175, in discussing the power of counties to impose license and occupation taxes, states in part:

"The power of requiring licenses and imposing license and occupation taxes may be delegated by the legislature to political subdivisions or agencies of the state, such as to counties * * *. In such cases, the power to license or tax is not inherent, but is wholly dependent upon, and limited by, the statute delegating the power; and will not be implied from a power to tax property. Statutes delegating such power are to be construed

strictly; and when the occupations which may be taxed are enumerated in the statute, the power to tax others is denied by implication."

In the case of Harris v. Commonwealth, 81 Va. 240, 1. c. 242, 243, appellant was accused and convicted of unlawfully keeping and maintaining "a certain public performance called a skating rink" without a license.

The statute provided in part:

"No person shall, without a license authorized by law, exhibit for compensation any theatrical performance, or any performance similar thereto, panorama, or any public performance or exhibition of any kind, lectures, literary readings and performances, except for benevolent or charitable purposes * * *."

The court, in observing that skating rinks were not enumerated in the statute, and consequently could not be brought within it unless it could be shown that actual performances or exhibitions of professional skating were given, said:

"Now, it will be observed that skating rinks are not enumerated in the statute, and consequently cannot be brought within it, unless it is clearly shown that they are so conducted as to be properly 'public performances or exhibitions.' And this is to be determined by the jury on the particular facts of each case, under suitable instructions from the court as to the law. But here the evidence shows that no performance of any kind was offered to the public except on extraordinary occasions when exhibitions of professional skating were given, and then the license tax was paid as required by law. On ordinary occasions admission fees were charged merely for the privilege of skating; and for this

no license tax is imposed. And if of those persons who paid for this privilege, some preferred, after entering the hall, to witness rather than to participate in the skating, a liability cannot, for that reason, be imposed on the accused, to which he would not have been subject had all chosen to exercise the privilege for which they had paid. In other words, it is clear that the liability of the accused to prosecution, for not taking out a license, cannot be made to depend upon the course pursued by the patrons of the rink after their admission thereto.

Moreover, if it can be justly said that on ordinary occasions there was any public performance, because of the fact that some of those who visited the rink were mere spectators of the exercises, it certainly cannot be said that such performance was exhibited by the accused. For those whose movements were witnessed by the spectators were not agents or employees of the accused, or in any way subject to his control; but were persons who resorted thither for their own pleasure or amusement, and not for the purpose of exhibiting themselves or their skill to the others. In short, we are of opinion that, according to the strict construction which must be given to the statute, the present case is not within its provisions.

If, in the judgment of the legislature, a license tax ought to be paid, under all circumstances, for the privilege of conducting a skating rink for compensation, it is competent for that body, by altering the statute, to so provide. We can only construe it as it is."

You point out that under Section 14327, R. S. Mo. 1929, relating to counties having a population of fifty thousand or more, roller rinks are specifically mentioned, and, therefore, that this demonstrates a legislative declaration that roller rinks are public exhibitions.

"The county court of every county in this state having a population of fifty thousand inhabitants or more, and lying adjacent to cities that now have or that may hereafter have a population of three hundred thousand inhabitants or more, and the county court of all counties which now have or which may hereafter have a population of not less than one hundred fifty thousand inhabitants and not more than five hundred thousand inhabitants, shall, at the May term of the county court of each year, impose, by an order entered of record, a license tax, such as the court may deem proper and reasonable, upon all theatrical or minstrel performances, exhibits, shows, circuses, menageries, roller rinks, or any other kind of public exhibitions; also scenic or gravity railways, cane racks, shooting galleries, baby racks, knife boards, or any other kind of avocations, set up in connection therewith; and it shall be unlawful for any person, association, company, corporation, or copartnership of persons (except if the same be for religious, educational or charitable purposes, then it shall be exempt from such license tax), to give, perform or present, exhibit or set up any theatrical or minstrel performances, exhibits, shows, circuses, menageries, roller rinks, or any other kind of public exhibitions, or scenic or gravity railways, cane racks, shooting galleries, baby racks, knife boards, or any other kind of avocations, set up in connection therewith, without first taking out a license therefor from the county clerk and paying the license tax imposed by the county court, as aforesaid, which shall be paid into the county treasury for the use of the general revenue fund of the county * * *."

The answer to such suggestion is, of course, that the legislature has under Section 14327, supra, specifically conferred the power to license skating rinks.

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-6-

July 14, 1939

From the foregoing, we are therefore of the opinion that absent a showing that the skating rink is giving performances for exhibitions of professional skill, the county court of Henry County has no power to levy a tax upon skating rinks under Section 14323, R. S. Mo. 1929, on the theory that they are public exhibitions. Having no authority to impose a tax, your second question obviously need not be considered.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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