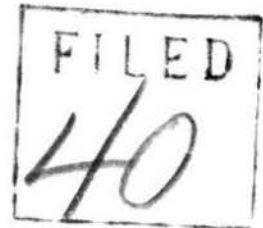


SALES TAX: The city is liable for a sales tax on material which it purchases directly and supervises the work itself. The same applies to property owners if the materials are furnished to them at their request.

July 5, 1939

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Hon. Roger Hibbard  
City Attorney  
Hannibal, Missouri

Dear Sir:

We are in receipt of your request for an official opinion which reads as follows:

"The City of Hannibal is desirous of an opinion from your office in connection with the liability of certain individuals for the payment of Missouri Sales Tax. The enclosed copy of a letter from the Lawson Coal and Sand Company, Hannibal, Missouri, was presented to the City of Hannibal in an effort to collect sales tax on the materials listed therein.

"Under the WPA working regulations it was necessary for the City of Hannibal, with its own force, to do an extended amount of construction work to complete paving projects. By this I mean this work could not be done by WPA labor nor could we participate in WPA materials allowances. This made it necessary for the City to do this work and pay for the same from the general fund. The City would not have had to expend this money except for these WPA projects. Is the City liable for sales tax of the materials purchased for that purpose?

"In the same connection, are the property owners who participate in these WPA projects for paving under a duty to pay a Missouri Sales Tax for materials purchased in Missouri and used on the WPA projects?"

July 5, 1939

In the case of City of St. Louis v. Smith, 114 S.W. (2nd) 1017, it was held to the effect that the contractors and not the city were liable as consumers for sales tax on materials used in the construction of paving, a sewer and a hospital where the contractors agreed to furnish all materials and deliver the completed work for a lump sum. It was the dealer's duty to collect the tax from the contractors at the time of the sale.

It was the contention of the state in that suit that the city was liable for the tax. However, from the facts which you present, it does not appear that the Lawson Coal and Sand Company was dealing with contractors for improvements of any nature for the city, but, on the other hand, it appears that the City of Hannibal, by the statement of your facts, carried on the work and made the improvements itself.

The word "person" is defined in Laws of 1935, page 413, as follows:

"'Person' includes any individual, firm, copartnership, joint adventure, association, corporations, municipal or private, \* \* \* \*."

The same provision is contained in the Laws of 1937, page 555.

I cannot determine from your letter whether or not the projects were carried on exclusively by the City of Hannibal.

We note that the Lawson Coal and Sand Company, in submitting the demand, made the following statement:

"The above account does not include any sand purchased for the Armory, as such material was not taxable, neither does it include any material which was charged to the City but paid privately."

Hon. Roger Hibbard

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July 5, 1939

Again applying the decision in the case of St. Louis v. Smith, 114 S.W. (2d) 1017, we rule as follows:

That the City of Hannibal is liable for the tax on the materials used in the WPA projects which were conducted and operated by the city itself with no middle-man intervening, that is, the city was the user and consumer of the materials within the meaning of the law.

The same would be applicable to property owners in the WPA project, the test being whether or not the work was being done for the property owners and the property owners would be liable directly to the persons who furnished the materials. In other words, the middle-man must be eliminated in the case of property owners also.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED By:

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J.E. TAYLOR  
(Acting) Attorney General

OWN:VAC