

CITIES: (1) Receipts from parking meters may be used
PARKING METERS: only for the purpose of purchasing, installing
and maintaining such meters and enforcing
regulatory ordinances in connection therewith;
(2) Parking meter receipts should be, but are not necessarily
required to be, carried in a separate fund by the city treasurer.

January 21, 1955



Hon. William Harrison Norton
Representative, Clay County
406 Armour Road
North Kansas City, Missouri

Dear Sir:

Reference is made to your request for an official opinion
of this department reading as follows:

"The city attorney of the City of Liberty
has requested me to ask you for an opinion
concerning the way in which parking meter
receipts may be spent. Specifically, these
are his questions:

"1. For what purpose or purposes may park-
ing meter receipts be spent?

"2. Should the parking meter receipts be
deposited in the general revenue fund or
should a special parking meter fund be main-
tained by the city treasurer?

"It appears that some argument has developed
with the city officials as to the proper use
of the parking meter receipts.

"Your cooperation will be very much appre-
ciated. * * * "

I.

The determination of your first question requires a con-
sideration of the nature of receipts from parking meters. That
cities have the power to regulate traffic through the medium
of such devices, appears in *Wilhoit, et al. vs. City of
Springfield, et al.*, 171 S.W.2d 95. The opinion in this case

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was cited with approval by the Supreme Court of Missouri in State ex rel. Audrain County vs. City of Mexico, reported 197 S.W. 2d 301, wherein the court said, l.c. 303:

"The regulation of the parking of automobiles on its streets by a city is a valid exercise of the State's delegated police power. City of Clayton v. Nemours, 353 Mo. 61, 66(3), 182 S.W. 2d 57, 59 (4), appeal dismissed, 323 U.S. 684, 65 S.Ct. 560, 89 L.Ed. 554; City of Clayton v. Nemours, 237 Mo.App. 167, 180, 164 S.W. 2d 935, 942 (16); Nemours v. City of Clayton, 237 Mo. App. 497, 509, 175 S.W. 2d 60, 65 (1, 2). This is also true of such regulation by means of parking meters. Wilhoit v. City of Springfield, 237 Mo. App. 775, 784, 786, 171 S.W. 2d 95, 98 (2,9). * * * "

In the Wilhoit case, attack was made upon a parking meter ordinance of the defendant City of Springfield. Among other grounds of claimed invalidity of the ordinance was an alleged conflict with a portion of what was then Section 8395 R.S.Mo. 1939, limiting the amount of license tax or fees which might be imposed by such municipalities. In disposing of this contention, the court in the Wilhoit case said, l.c. 100:

"As we view it the Legislature did not intend by the enactment of subsection 'c' to abrogate, abridge, restrict or limit the police power delegated to the city and that the provisions of the said subsection 'c' do not prevent the collection of a fee that is merely incidental and referable only to the police power, and enacted only for the purpose of purchasing, installing, maintaining and enforcing such regulatory provisions. Such fee is not in the nature of a tax as that term is ordinarily used; nor is it a rental fee, but is a fee or charge referable solely to the police power of the city to regulate parking and is to be used for the purposes above enumerated. * * * "
(Emphasis ours.)

As pertinent to the matter under consideration, we quote further from the opinion in the same case as found l.c. 101:

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"The burden of establishing the fact, if it be a fact, that the ordinance is a revenue measure is cast upon plaintiffs. And this is true whether it is solely for the purpose of raising revenue or for the double purpose of regulating the parking of automobiles and raising revenue. The ordinance is valid if a regulation and void if a tax."
(Emphasis ours.)

The foregoing discloses the usage to which receipts from parking meters may lawfully be put, viz., purchasing, installing and maintaining such devices and enforcing regulatory ordinances incident thereto. The appellate courts might very well hold that ordinances relating to off-street parking could very well be included in the general comprehensive scheme of city-wide traffic regulation. If such a decision be reached, then, of course, the receipts from parking meter operations could be used for the payment of off-street parking facilities.

It is a matter of common knowledge that the charge made for parking cannot be related with arithmetical preciseness to the expenses incurred by the municipality, and therefore, in determining the reasonableness of such charges, the courts have permitted a substantial latitude therein. However, the fundamental principle remains that such charges theoretically, in accordance with the rule applicable to all other fees of like nature, must not unduly exceed the expenses to the city incurred in enforcing the same.

In the event that such charges are unreasonable, so that in effect the parking meter ordinance becomes, in fact, a revenue measure, its validity cannot be sustained and the following rule of law would become applicable. We quote from the Wilhoit case again, l.c. 102:

"The evidence also tended to show that prior to and at the time the parking meter ordinance was passed the purpose of defendants was to collect a sufficient amount from the meters, over and above the expense incident to the regulatory provisions of the ordinance, to enable the city to reduce or repeal the gasoline tax then being collected. If that was the purpose in adopting the ordinance we would be constrained to say in the language of Judge Sturgis,

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Commissioner in the case of State ex rel. Marlowe v. Himmelberger-Harrison Lbr. Co., 332 Mo. 379, 58 S.W.2d 750, 754: 'This may be a laudable purpose from one standpoint, but from a legal standpoint it constitutes legal fraud.' Russell et al. v. Frank, et al., 348 Mo. 533, 154 S.W. 2d 63." (Emphasis ours.)

II.

Your further question presents one solely related to the proper method of maintaining the accounts of the city funds by the treasurer. In view of what has been said under I, supra, as to the purposes for which parking meter receipts might be used, it seems obvious that for accounting purposes a special fund should be established in the city treasury in order that persons interested therein, including both city officials and others, might readily ascertain that the funds deposited therein were, in fact, being used for the lawful purposes which have been enumerated. However, we do not find any statute specifically requiring such separation of funds, and our thinking in this regard reflects solely our concept of a public policy making readily available to persons having a lawful interest therein knowledge of the fiscal affairs of municipalities.

CONCLUSION

In the premises, we are of the opinion that receipts from parking meters may be lawfully used only for the purpose of purchasing, installing and maintaining such meters and for the enforcement of regulatory ordinances reasonably related thereto.

We are further of the opinion that the statutory law does not require that such receipts be placed in a separate fund in the city treasury, but that such a course is dictated by sound public policy and efficient accounting practices.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General