

Opinion No. 216
answered by letter.
(Albert J. Stephan)

June 13, 1962



Honorable Clyde F. Portell
State Representative
Ste. Genevieve County
Ste. Genevieve, Missouri

Dear Mr. Portell:

This is in response to your request for advice as to whether the City of Sainte Genevieve may properly pass and enforce an ordinance, the substantive provisions of which are:

"Section One: No Automobile-wrecking yard or junk yard shall be established maintained, or operated within fifty (50) feet of any highway, street, or alley within the city limits of the City of Ste. Genevieve, Missouri; unless such auto-wrecking yard or junk yard is screened from said highway, street, or alley by a tight board or other screen fence not less than ten feet high, or of sufficient height to screen the wrecked or disabled automobiles or junk kept therein from the view of persons using such highway, street or alley on foot or in vehicles in the ordinary manner.

"Section Two: Any person, firm or corporation who shall establish, conduct, own, maintain or operate any automobile wrecking yard or junk yard without complying with the provisions of this ordinance shall, on conviction, be guilty of a misdemeanor and shall be punished by fine not exceeding One Hundred Dollars (\$100.00) or by imprisonment in jail not exceeding (60) sixty days, or by both such fine and imprisonment."

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We take notice of the fact that Sainte Genevieve is a city of the fourth class. As such, its powers, with respect to regulation of businesses, are set out in Section 94.270, R.S. Mo. 1959. Although that section includes no specific reference to the control of operation or location of automobile wrecking or junk yards, it does contain rather broad language:

"The mayor and board of aldermen shall have power and authority to regulate and to license and to levy and collect a license tax on auctioneers, druggists, hawkers, peddlers, banks, brokers, pawnbrokers, merchants of all kinds, . . . automobile agencies, and dealers, public garages, automobile repair shops or both combined, dealers in automobile accessories, gasoline filling stations, . . . and all other business, trades and avocations whatsoever. . . ."
(Emphasis supplied.)

The power of a city of the third class to regulate junk yards was recognized by the St. Louis Court of Appeals in *City of Washington v. Mueller*, (1949) 218 SW2d 801. In that case, the city attempted to enjoin the operation of an auto wrecking and junk yard on the grounds that it was a public nuisance. The city had previously ordered the abatement of the operation after a meeting of the city board of health in which the desirability of the junk yard was considered. The essence of the court's ruling is made clear from the following excerpt found at page 803:

"* * * A junk yard is necessarily an unsightly place and is an eyesore in a residential district, and is subject to regulation by the city and restriction as to location under proper ordinances, but is not necessarily a public nuisance to be abated as a menace to public health. The city in this case fully recognizes that a junk yard is a legitimate business, and has fixed a license tax to be paid by the person conducting a junk yard. Section 6986, RS 1939,

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Mo. RSA § 6986, gives the city power to levy and collect a license tax, regulate, restrain, prohibit and suppress several businesses, including automobile wrecking shops and junk dealers. This cannot be construed to mean that the city can both levy and collect a license tax and regulate such businesses, and at the same time restrain, prohibit and suppress them. It must do one or the other, and this plaintiff has seen fit to provide for collecting a license tax rather than prohibiting a junk yard. * * *

At page 804, the court said:

"* * *It might be very desirable for the city to proceed under Section 6986 and pass ordinances to prohibit and suppress junk yards and automobile wrecking shops anywhere in the city limits, or within certain limits of the city. It has never done so. And even though all junk yards, and especially this one, are unsightly, an equitable court cannot sanction the confiscation of private property for aesthetic purposes, and especially so where the gist of the complaint is that the junk yard is a nuisance because of being a menace to public health. * * *
(Emphasis supplied.)

Section 6986, RSMo 1939, with some revisions not relevant here, is now denominated as Section 94.110, RSMo 1959. That section sets out the powers of cities of the third class and specifically authorizes the regulation of "auto yards" as well as the regulation and suppression of "auto wrecking shops" and "junk dealers."

It could, of course, be argued that the specific mention of auto wrecking shops and junk dealers in the statute relating to cities of the third class prevents their being read by inference into Section 94.270, supra. To accept such an argument, however, would be to deny the universality of the reference in Section 94.270 to

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"merchants of all kinds" and "all other business, trades and avocations whatsoever" We believe that the all-encompassing nature of those phrases precludes any such argument.

Moreover, such an argument was rejected by the St. Louis Court of Appeals in *City of Flordell Hills v. Hardekopf*, (1954) 271 SW2d 256 in which the contention was made that, since a statute relating to cities of more than 300,000 persons permitted a graduated license tax based on sales in the prior year, cities of the fourth class were limited to a flat rate tax because the statutes pertaining to them made no provision for a graduated tax. The court said, l.c. 257:

"Where defendant's argument goes amiss is in failing to recognize that the powers granted to each class of cities in this state are for the most part the subject of separate and distinct statutes which only apply to the class of cities to which they relate. *City of Aurora v. McGannon*, 138 Mo. 38, 45, 39 S.W. 469. The fact, therefore, that the power to graduate the amount of a merchant's license tax in proportion to his sales during the preceding fiscal year may only be given in express terms to cities of more than 300,000 population is no indication that such method of determining the tax is thereby denied to cities of other classifications. Indeed, if such provision in Section 92.040 has any significance at all in connection with the matter now before us, it is only that it constitutes a definite legislative declaration that the fixing of such a tax upon the basis of gross sales is of itself neither arbitrary nor unreasonable."

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On the basis of the foregoing, we are persuaded that the City of Ste. Genevieve may properly enact an ordinance, under the authority of Section 94.270, whereby the operation of automobile wrecking yards and junk yards would be regulated to the extent that such yards may not be maintained within fifty feet of any city street or alley unless such yard is screened from public view.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

AJS:ms