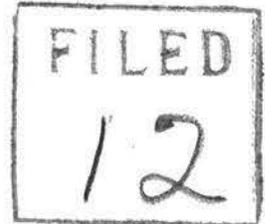


INDUSTRIAL DEVELOPMENT:  
MUNICIPALITIES:  
CITIES:  
TAXATION:

A municipality which owns a manufacturing or industrial facility developed under Section 71.790 to 71.850, RSMo 1963 Cum. Supp., may not require a tenant thereof, as part of the leasing agreement, to pay monies in lieu of taxes to another taxing body.

OPINION NO. 12 (1964)

June 22, 1964



Mr. Lawrence A. Schneider, Director  
Commerce and Industrial Development Division  
Eighth Floor, Jefferson Building  
Jefferson City, Missouri

Dear Mr. Schneider:

This is in response to your request for an opinion as follows:

"Can a manufacturer agree to pay (or give) a regular amount of money [in lieu of taxes] to a municipality, or county government, or school district? If so, can this regular gift be previously agreed to by a written contract or agreement?"

You indicate that the opinion request was prompted because House Bill No. 576, which would have specifically covered this situation and permitted it, failed of passage in the 72nd General Assembly.

The subject matter of your request pertains to those facilities constructed and leased by municipalities for the purposes of attracting manufacturing and industrial concerns under Section 71.790 to 71.850, RSMo 1963 Cum. Supp. (The Industrial Development Act),

When a municipality constructs industrial facilities, the real estate is not taxable by any political entity, hence if agreements could be made for the lessee of the industrial plant to pay to the city a sum of money which could be paid by the city to other taxing authorities or could be paid directly by the lessee to other taxing authorities this would relieve some of the tax burden of those entities because of the removal of the

real estate from the tax rolls. There are good arguments for so doing. The problem is - does the law authorize such arrangements or agreements.

The general language of the Industrial Development Act does not contain any express statutory grant of authority for the city to enter into an agreement by which municipal funds are to be given to various other taxing authorities.

Section 432.070, RSMo 1959, states that contracts by cities may only be made when authorized by law. This section reads as follows:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

While there is no case directly in point, that of Arbyrd Compress Co. v. City of Arbyrd, App., 246 S.W. (2d) 104, holds that an agreement to pay a certain amount yearly for taxes and assessments was void because of the lack of authority on the part of the officers of the city to make such a contract. In that case, the plaintiff's property was excluded from the limits of the defendant city by the county court. Thereafter, the city brought an action to review the judgment. Upon the completion of an agreement by the plaintiff to pay a certain amount yearly for taxes and assessments to the city if his land was excluded from the limits of the city, the city dismissed its action and consented to the judgment. The contract was found to be violative of Section 432.070, RSMo 1949.

There being no express legislative authorization as required by Section 432.070, a municipality does not have the power to enter into a contract providing for the payment of municipal funds derived from the lease of industrial development projects to other taxing authorities. This view is buttressed by the failure of the 72nd General Assembly to pass House Bill No. 576, which would have authorized such practices.

Mr. Lawrence A. Schneider

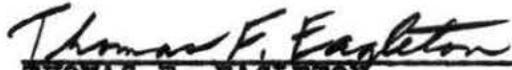
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CONCLUSION

Therefore, a municipality which owns a manufacturing or industrial facility developed under Section 71.790 to 71.850, RSMo 1963 Cum. Supp., may not require a tenant thereof, as part of the leasing agreement, to pay monies in lieu of taxes to another taxing body.

The foregoing opinion, which I hereby approve, has been prepared by my assistant, Thomas E. Eichhorst.

Very truly yours,

  
\_\_\_\_\_  
THOMAS F. EAGLETON  
Attorney General