

May 21, 1964



Honorable James I. Spainhower
State Representative
Saline County
516 S. Drive
Marshall, Missouri

Dear Mr. Spainhower:

This is in answer to your letter of recent date in which you inquired regarding the provisions of Section 30(a) of Article IV of the Constitution of Missouri, adopted March 6, 1962, providing for the allocation of the motor vehicle fuel tax in this state.

As you stated in your letter, the allocation to incorporated cities, towns and villages is restricted to those cities, towns and villages having a population of more than two hundred according to the last preceding Federal Decennial Census. You inquire as to whether it would be possible for a lawsuit to be filed to determine the validity of such constitutional provision.

It is possible to test the validity of a state constitutional provision in a lawsuit. While the provisions for allocating gasoline taxes are now a part of the State Constitution, the legality of the adoption of such constitutional provision could be tested in court. Also, any state constitutional provision which contravenes the Federal Constitution will be held to be void. *Fisk v. Police Jury*, 116 U.S. 131, 6 S. Ct. 329, 29 L. Ed. 587.

Page Two
Honorable James I. Spainhower

I would be very doubtful that any court would hold the provisions of Section 30(a) of Article IV of the Constitution of Missouri invalid. However, as stated above, it is possible to file a lawsuit to test the validity of such constitutional provision. We do not in any way attempt to decide what sort of suit could properly be filed or in what court it could be filed or by whom. This is a matter to be determined by the lawyer who files the lawsuit. We simply hold that it is possible to file a suit testing the validity of such constitutional provision.

Yours very truly,

THOMAS F. EAGLETON
Attorney General