

CERTIFIED PUBLIC ACCOUNTANTS:
ACCOUNTANTS:
LICENSES:
LICENSE TAX:
CITIES, TOWNS, AND VILLAGES:

A third class city cannot
levy a license tax on
accountants.

OPINION NO. 285

December 4, 1964

Honorable Thomas T. Keating
Representative, Pettis County
Sedalia Trust Building
Sedalia, Missouri



Dear Mr. Keating:

This is in reply to your request for an opinion in your letter dated August 11, 1964, which reads as follows:

"I have been asked for an interpretation of Section 71.620 R.S. Mo 1959 which exempts certain professions from taxation by municipalities.

"The question which has arisen concerns Certified Public Accountants. In the city of Sedalia a C.P.A. firm from the Jackson County area opens an office for the four and five month period of each year during which income tax work is prevalent. It is my understanding that the office in Sedalia is a branch office of their main office in Jackson County, but that the personnel in the Sedalia office are not Certified Public Accountants.

"Also, in the city of Sedalia there is operating an accounting firm owned by two Certified Public Accountants. One of them lives in Springfield, Missouri, and operates an office of this firm there and the other lives here in Sedalia and operates this office here. They employ approximately 15 persons in carrying on their duties as Certified Public Accountants.

"I would appreciate your further advising whether or not either of the above operations does not come within the meaning of Section 71.620 as far as taxation by the city of Sedalia is concerned."

In your opinion request you asked for an interpretation of Section 71.620, RSMo Cum. Supp. 1963, and whether the factual situation described falls within its prohibitions. Irrespective of whether it falls under Section 71.620, it is our opinion that the city of Sedalia, due to other statutory provisions, cannot levy a license tax on accountants.

The authority of the city of Sedalia to impose a license or occupation tax on certain businesses is provided by Section 94.110, RSMo 1959. Accountants are not included in the various occupations listed therein. A city has no inherent right to levy and collect taxes. The authority for a city to tax must be expressly granted or necessarily incident to the powers conferred and in case of doubt, must be denied. In the case of *Moots v. City of Trenton*, 214 S.W. 2d 31, 33, later cited with approval by the court in *Holland Furnace Company v. City of Chaffee*, 279 S.W. 2d 63, the Supreme Court stated the law as follows:

"In ruling the point in the *Siemen's* case, the court pointed out that a city has no inherent power to tax; that such power rests primarily in the state but may be delegated by constitutional provision or by statutory enactment; that the authority for a city to tax must be expressly granted or necessarily incident to the powers conferred and in case of doubt, the power to tax is denied. * * * We rule that the city of Trenton was not empowered by Section 6986 to levy a license tax upon music machines because such machines were not specifically named therein."

Section 71.610, RSMo 1959, provides that no municipality shall have power to impose a license tax on any business pursuit unless the pursuit is especially named as taxable in the charter of the municipality or unless conferred by statute. Since the authority to require accountants to obtain a license has not been granted by Section 94.110, it is the opinion of this office that the city of Sedalia has no authority to require accountants to pay a fee to obtain such a license.

CONCLUSION

It is the opinion of this office that the city of Sedalia, a third class city, cannot levy a license tax on accountants.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary A. Tatlow.

Very truly yours,


THOMAS F. EAGLETON
Attorney General