TAXATION:
CITY OF FOURTH CLASS:
OCCUPATIONAL TAX:
DRIVER'S LICENSE FEES:

A city of the fourth class may not charge an occupational tax on driver's license fees collected by agents of the Department of Revenue who are acting under the authority of Section 136.055, RSMo Cum. Supp. 1967.

OPINION NO. 264

May 14, 1968

FILED
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Mr. Thomas A. David, Director
Department of Revenue
Jefferson Building
Jefferson City, Missouri

Dear Mr. David:

This is in response to your request for an opinion concerning whether or not a city of the fourth class may charge an occupational tax on driver's license fees collected by agents of the Department of Revenue who are acting under the authority of Section 136.055, RSMo Cum. Supp. 1967.

Section 136.055 provides:

> "1. Any person who is selected or appointed by the state director of revenue to act as an agent of the department of revenue, whose duties shall be the sale of motor vehicle licenses and the collection of motor vehicle sales and use taxes under the provisions of section 144.440, RSMo, and who receives no salary from the department of revenue shall be authorized to collect from the party requiring such services additional fees as compensation in full for all services rendered on the following basis:
>
> (1) For each motor vehicle or trailer license sold, renewed or transferred--forty cents;
>
> (2) For each application or transfer of title--forty cents;
>
> (3) For each chauffeur's, operator's or driver's license--forty cents;

> (4) No notary fee or other fee or additional charge shall be paid or collected.
>
> 2. This section shall not apply to agents appointed by the state director of revenue in any city where the department of revenue maintains an office."

The power of fourth class cities to levy the type of tax in question is found in Section 94.270, RSMo Cum. Supp. 1967. This statute enumerates many types of businesses and occupations, none of which expressly include an agent of the Department of Revenue who is selling driver's licenses. One of the general occupations enumerated is that of "merchants of all kinds". This phrase has been interpreted previously by the Missouri Supreme Court in the case of City of Ozark vs. Hammond, (Mo. 1932), 49 S.W. 2d 129, 131, wherein the court states:

> "A merchant is one who is engaged in the purchase and sale of goods; a trafficker; a trader."

An agent of the Department of Revenue operating under Section 136.055 is certainly not engaged in the "purchase and sale of goods". He makes no purchases and merely serves as an extension of the Department of Revenue. The only other provision of Section 94.270 to which a fourth class city could look for authority to levy this tax would be the catch-all phrase "and all other business, trades and vocations whatsoever". A phrase such as this was considered in the case of City of St. Louis vs. Laughlin, (Mo. 1872), 49 Mo. 559, which involved an attempt by the City of St. Louis to impose a license tax upon lawyers before they were allowed to practice or engage in their professional business. The court, in holding that lawyers were not included within the provision, stated their reasoning as follows (page 564):

> "In the present case the charter specifically enumerates the classes of persons intended to be taxed, and the sweeping words 'all other business, trades, vocations or professions', we do not think can be made to include persons not of the same generic character or class. In specifying and enumerating the trades and professions to be taxed, it was intended to limit the taxation to them or to persons engaged in similar trades or occupations . . ."

In construing Section 94.270 we must consider the rule set forth by the Missouri Supreme Court in City of St. Charles vs. St. Charles Gas Co., (Mo. 1945), 185 S.W. 2d 797, and recited in City of Bolivar vs. Ozark Utilities Co., (Mo. 1945), 191 S.W. 2d 368, at 370, as follows:

> "'* * * But since 1889 our statutes relating to municipalities have contained this delimitating declaration of policy (Ex parte Lockhart, 350 Mo. 1220, 171 S.W. 2d 660): "No municipal corporation in this state shall have the power to impose a license tax upon any business avocation, pursuit or calling, unless such business avocation, pursuit or calling is specially named as taxable in the charter of such municipal corporation, or unless such power be conferred by statute." Mo.R.S.A. §7440. This plain statutory declaration of policy is applicable to all cities and "it clearly places a limitation upon the power to tax occupations." Pierce City v. Hentschel, Mo. Sup., 210 S.W. 31, 32. Unless the business or occupation is specifically enumerated as one subject to a license tax, the general rule is that the municipality has no authority to so tax it. Keane v. Strodtman, 323 Mo. 161, 18 S.W. 2d 896; Siemens v. Shreeve, supra.'" (Emphasis added.)

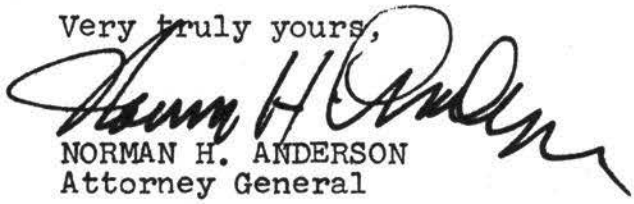
The agent provided for in Section 136.055 is clearly not of the same generic character or class as the enumerated businesses and occupations of Section 94.270. The obvious distinction being that this agent is selling an item whose cost and market is completely controlled by statute i.e., Chapter 302, RSMo 1959, as amended.

CONCLUSION

Therefore, it is the opinion of this office that a city of the fourth class may not charge an occupational tax on driver's license fees collected by agents of the Department of Revenue who are acting under the authority of Section 136.055, RSMo Cum. Supp. 1967.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas J. Downey.

Very truly yours,



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