

Answered by Letter-Nowotny

February 17, 1969



OPINION LETTER NO. 32

Senator Donald L. Manford
9409 Oakland
Kansas City, Missouri 64138

Dear Senator Manford:

This is in answer to your request for an opinion of this office as to the constitutionality of the Kansas City Earnings Tax.

The Kansas City Earnings Tax is provided for by Sections 92.210 through 92.300, RSMo Supp. 1967. Section 92.210, supra, states that constitutional charter cities of a certain size (of which Kansas City is one) are authorized to levy and collect, by ordinance, an earnings tax. Section 92.300, supra, provides that no ordinance shall be effective unless authorized by the city charter.

Section 19, Article VI, Constitution of Missouri, provides in part:

"Any city having more than 10,000 inhabitants may frame and adopt a charter for its own government, consistent with and subject to the constitution and laws of the state, in the following manner:
* * *"

Kansas City adopted its charter pursuant to this constitutional provision.

The power to tax is in the state and may be delegated by constitutional provision or statutory enactment. A city has no inherent power to tax. The authority to tax must be expressly granted or necessarily incident to the powers conferred. *Siemens v. Shreeve*, 317 Mo. 736, 296 S. W. 415 [1-3] (1927). An earnings tax is not a licensing or regulatory measure but is essentially a revenue measure and is a species of income or excise tax. *Carter Carburetor Corp. v. City of St. Louis*, 356 Mo. 646, 203 S. W. 2d 438, 440 [1] (1947); *Lawyers' Association of St. Louis v. City of St. Louis, Mo. App.*, 294 S. W. 2d 676, 682 (1956).

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The Kansas City Earnings Tax was recently the subject of controversy in *Grant V. Kansas City, et al., Mo. En Banc, 431 S. W. 2d 89 (1968)*. There, the question was whether Kansas City could amend its charter to authorize an increase in the earnings tax beyond the statutory limit provided in Section 92.230, supra, without an amendment to Section 92.230. The Court held that the proposed amendment to the Kansas City charter did not involve a matter of purely local concern and was invalid in view of Section 92.230 and in view of the constitutional provision that charters adopted by constitutional charter cities must be consistent with the constitution and laws of this state. The Court, though not directly ruling on the question, necessarily implied that the present Kansas City Earnings Tax is within the existing constitutional and statutory grants.

Finally, the St. Louis Earnings Tax, which is similar to the Kansas City Earnings Tax (See Sections 92.110 through 92.200, RSMo), has been held to be constitutional by the Supreme Court, En Banc, in two cases, *Walters v. City of St. Louis, 259 S. W. 2d 377 (1953)* and *Arnold v. Berra, 366 S. W. 2d 321 (1963)*.

It is our opinion that the Kansas City Earnings Tax is authorized by and consistent with the above discussed constitutional and statutory provisions. We find no constitutional provisions violated by the earnings tax.

Very truly yours,

JOHN C. DANFORTH
Attorney General