

*Approved by Letter - Klaffenbach*

September 23, 1969

OPINION LETTER NO. 397



Mr. James E. Schaffner, Director  
Department of Revenue  
Jefferson Building  
Jefferson City, Missouri 65101

Dear Mr. Schaffner:

This letter is in response to your opinion request concerning an interpretation of Senate Bill No. 241.

More specifically, you inquire how the distribution of the cigarette tax funds shall be made and to whom such distribution shall be made.

Senate Bill No. 241 of the 75th General Assembly is an amendment to Section 210.320 of the Revised Statutes of 1959.

The amended section reads in full as follows:

"The county court in any such county, or the circuit court en banc in any first class county with all or part of a city of 350,000 or more population, shall make all rules and regulations for the government of such places of detention, appoint officers and attendants, including teachers, prescribe their duties and fix their compensation. The expense of maintaining such places of detention, including the compensation of officers and employees thereof, shall be paid out of any funds available for the purpose, as said county court may deem proper; provided, no portion of the special road fund shall be appropriated for this purpose.

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"In any first class county with all or the greater part of a city of 350,000 or greater, to help defray the expenses of such places of detention and other children's services and for no other purposes, the county court or other legislative authority is hereby authorized to impose a tax on the sale of cigarettes made of tobacco or any substitute for tobacco, not to exceed two and one-half mills per cigarette sold in said county.

"The rate of taxation shall not be greater than the amount required for children's services.

"The county cigarette tax shall be collected by the division of collection of the state department of revenue. The division shall each day retain, from the county tax collected, one per cent of the amount collected and deposit that amount in the state general revenue fund to help defray the cost to the state of collecting and distributing this tax.

"The tax shall be paid and stamps affixed in the same manner as is provided by chapter 149 RSMo, for the state cigarette tax; except that no discount shall be given any wholesaler for affixing stamps or making reports required by the division.

"The director of revenue of this state shall promulgate reasonable and necessary regulations for the collection of this tax and any violation of such regulation is a misdemeanor and any person convicted of such a misdemeanor shall be punished by law.

"The budget for the operation of such places of detention shall be fixed by the Circuit Court en banc in counties of the first class with all or part of a city of 350,000, or more, population. Such budget shall be filed with the County Court at the same time as, and becomes a part of, the budget of the Circuit Court en banc for the performance of its other duties and functions."

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Throughout this section, the emphasis indicates that the tax imposed is a county tax and for county purposes. It is clearly provided that the division of collection of the State Department of Revenue acts only as a collecting agency of the "county cigarette tax" and to defray such costs, the division of collection receives one per cent which is deposited in the state general revenue fund.

We also note that the budget for the operation of such places of detention, for which such funds are used, would be fixed by the Circuit Court en banc in counties of the first class with all or part of a city of 350,000, or more, population and be filed with the County Court at the same time as, and becomes a part of, the budget of such Circuit Court en banc for the performance of its other duties and functions. The expenses of the Circuit Courts, of course, are paid out of the county treasury. Section 476.270, RSMo 1959.

The county treasurer is the proper officer to receive such moneys from the division of collection, less the one per cent deposited in the state general revenue fund, and to disburse the same on warrants drawn by order of the county court. Section 54.100, RSMo 1959.

We further note that the one per cent of the amount retained to defray the cost of collection and distribution of the tax is to be retained "each day." It follows that the legislature intended the distribution of the balance to the county treasury be on a day-to-day basis.

Yours very truly,

JOHN C. DANFORTH  
Attorney General