

CONSTITUTIONAL LAW:

(1) Senate Bill No. 241 of the 75th General Assembly is not unconstitutional in violation of Article I, Section 13, Missouri Constitution; and (2) Senate Bill No. 241 is not unconstitutional in violation of Article X, Section 10(a), Missouri Constitution.

December 31, 1969

OPINION NO. 487A

Honorable J. J. Schorgl
Representative, District 9
126 N. Quincy
Kansas City, Missouri 64123



Dear Mr. Schorgl:

This is in reply to your request for an official opinion of this office which request reads as follows:

"I would also appreciate receiving your opinion as to whether Senate Bill 241 is constitutional or if it is in violation of Article I, Section 13, or Article X, Section 10A of the Missouri Constitution."

Senate Bill No. 241 amends Section 210.320, RSMo, and now reads as follows:

"Section 1. Section 210.320, RSMo 1959, is repealed and one new section enacted in lieu thereof to be known as 210.320, to read as follows:

"210.320. 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."

You first ask if this law violates the provisions of Article I, Section 13, Missouri Constitution, which reads as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities can be enacted."

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The term "ex post facto" has reference to crimes and their punishment and the term "retrospective" refers exclusively to laws relating to civil rights and remedies. Ex parte Bethurum, 66 Mo.545.

The term "ex post facto" means a law denouncing as crimes, acts which were innocent when committed or changing penalties for criminal violations after such violations. State ex rel. Jones v. Nolte, Mo., 165 S.W.2d 632.

A "retrospective" law is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Lucas v. Murphy, 348 Mo. 1078, 156 S.W.2d 686.

The provision prohibiting the enactment of any law impairing the obligation of contracts means that where a contract, that when made, is valid by the laws of the state as then expounded by the departments of government and administered in its courts of justice, then its validity and obligation cannot be impaired by any subsequent constitutional ordinance or act of the legislature or decision of its courts altering the construction of the law. State v. Miller, 50 Mo.129.

After carefully examining Senate Bill No. 241 it is our opinion that said act is not unconstitutional in violation of Article I, Section 13, Missouri Constitution.

You next ask if Senate Bill No. 241 violates the provisions of Article X, Section 10(a), Missouri Constitution, which reads as follows:

"Except as provided in this Constitution, the general assembly shall not impose taxes upon counties or other political subdivisions or upon the inhabitants or property thereof for municipal, county or other corporate purposes."

In Kansas City Grading Co. v. Holden, 107 Mo.305, 17 S.W. 798,799, it was said:

"The right to levy taxes, either general or special, is vested primarily in the legislature. The power to raise local taxes for municipal purposes may be, and generally is, delegated to and exercised by the legislative body of the municipality. * * * "

It is our opinion that Senate Bill No. 241 delegates the power to tax by the language, "the county court or other legislative authority is hereby authorized to impose a tax" and that such language does not constitute a tax imposed by the legislature. See Coleman v. Kansas City, 353 Mo.150, 182 S.W.2d 74.

Therefore, it is the opinion of this office that Senate Bill No. 241 does not violate the provisions of Article X, Section 10(a), Missouri Constitution.

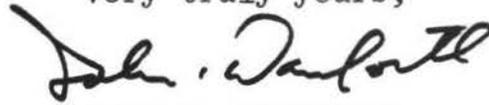
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CONCLUSION

It is the opinion of this office that Senate Bill No. 241 of the 75th General Assembly, which provides for places of detention in certain counties and for a county cigarette tax to operate such places of detention: (1) is not unconstitutional in violation of Article I, Section 13, Missouri Constitution; and (2) is not unconstitutional in violation of Article X, Section 10(a), Missouri Constitution.

The foregoing opinion, which I hereby approve, was prepared by my assistant Walter W. Nowotny, Jr.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General