

TAXATION (CITIES, TOWNS & VILLAGES)
POLITICAL SUBDIVISIONS
EARNINGS TAX

School districts in St. Louis County, under the provisions of Section 92.350, RSMo 1969, must deduct the St. Louis

City Earnings Tax from the wages and salaries of their employees who are residents of the City of St. Louis, and remit the amount withheld (less statutory allowances) to the St. Louis City Collector.

OPINION NO. 148

August 22, 1972



Dr. Arthur L. Mallory
Commissioner of Education
State Department of Education
Jefferson State Office Building
Jefferson City, Missouri 65101

Dear Dr. Mallory:

This official opinion is issued in response to your request for a ruling on whether local districts are required under Section 92.350, RSMo 1969, to deduct the amount of any municipal earnings tax levied against the earnings of teachers and other employees who reside in a municipality where an earnings tax is levied if the municipality is not within the boundaries of the employing school district.

Your request is prompted by a recent demand of the St. Louis City Collector that some of the school districts in St. Louis County withhold an amount equal to the St. Louis City Earnings Tax and remit the sum to the City Collector. We confine our opinion to a determination of whether school districts in St. Louis County must deduct the St. Louis City Earnings Tax from the paychecks of their employees who are residents of the City of St. Louis, and remit the amount withheld to the St. Louis City Collector.

Under Section 92.110, RSMo 1969, and its predecessor, the City of St. Louis has been authorized to levy and collect, by ordinance, for general revenue purposes, an earnings tax on the salaries, wages, and other compensation earned by its residents:

"Tax may be levied on earnings and profits (St. Louis). Any constitutional charter city in this state which now has or may hereafter acquire a population in

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excess of seven hundred thousand inhabitants, according to the last federal decennial census, is hereby authorized to levy and collect, by ordinance, for general revenue purposes, an earnings tax on the salaries, wages, commissions and other compensation earned by its residents; on the salaries, wages, commissions and other compensation earned by nonresidents of the city for work done or services performed or rendered in the city; on the net profits of associations, business or other activities conducted by residents; on the net profits of associations, businesses or other activities conducted in the city by nonresidents; and on the net profits earned by all corporations as the result of work done or services performed or rendered and business or other activities conducted in the city." (Emphasis added.)

From the federal decennial census of 1920 through the census of 1960, the City of St. Louis had a population of more than 700,000 inhabitants. Thus, Section 92.110 (and its predecessor) applied to St. Louis. According to the federal census in 1970, however, the population of the City of St. Louis has fallen below 700,000 (to 622,236). (See Official Manual, State of Missouri, 1971-1972, page 1424.) Section 92.110, RSMo 1969, remains in force, nevertheless, by virtue of Section 1.100.2., RSMo 1971 Supp.:

"Population, how determined -- effective date of census -- loss or gain in population for certain purposes, effect of.

* * *

"2. Any law which is limited in its operation to counties, cities or other political subdivisions having a specified population or a specified assessed valuation shall be deemed to include all counties, cities or political subdivisions which thereafter acquire such population or assessed valuation as well as those in that category at the time the

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law passed. Once a city not located in a county has come under the operation of such a law a subsequent loss of population shall not remove that city from the operation of that law. . . ." (Emphasis added.)

In 1960, St. Louis passed an ordinance providing for the levying and collecting of an earnings tax effective in St. Louis (St. Louis, Missouri, Revised Code of Ordinances, Chapter 145, Earnings Tax, 1960).

Sections 92.120 through 92.200, RSMo 1969, describe various requirements for the earnings tax, including the tax rate limit; certain exceptions to the earnings tax; and arrangements for employers to collect and remit the tax while retaining a percentage as compensation.

In the instant situation, the City of St. Louis seeks to collect its earnings tax from city residents employed by school districts in St. Louis County, by having these school districts deduct the tax from their wages and salaries. Section 92.350, RSMo 1969, requires the state and its political subdivisions to make such deductions:

"State and political subdivisions to deduct earnings tax -- compensation for collecting. -- The state of Missouri and all its political subdivisions or instrumentalities shall deduct from the wages and salaries of their employees the amount of any municipal earnings tax levied upon the income of the particular employee, and pay same to the municipality levying said tax. The state of Missouri and its political subdivisions and instrumentalities shall be entitled to deduct and retain of the total amount so collected to compensate such employer for collecting the tax a percentage as follows: Three percent if said municipal earnings tax is one-half of one percent of gross earnings. One and one-half percent if said municipal earnings tax is one percent of gross earnings." (Emphasis added.)

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In Smith v. Consolidated School District No. 2, 408 S.W.2d 50 (Mo. en banc, 1966) the Court held that school districts, as political subdivisions of the state, are immune from liability in tort for negligence.

". . . For more than a century the courts of Missouri have uniformly held generally that political subdivisions of the state are not subject to liability in suits for negligence. [Citations omitted.] School districts are political subdivisions of the state. Art. 10, Section 15, Constitution of Missouri, V.A.M.S., Section 70.210, RSMo 1959, V.A.M.S. As such, school districts have long been held immune from liability in tort for negligence. . . ." Id. at 54. (Emphasis added.)

School districts have been included in various definitions of "political subdivision." In Section 15, Article X (Taxation), Missouri Constitution, the term "other political subdivision" is defined as follows:

"Definition of 'other political subdivision.' The term 'other political subdivision,' as used in this article [on taxation], shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax." (Emphasis added.)

"Political subdivision" is defined in Section 70.210(2), RSMo 1969, as follows:

"Definitions. -- As used in sections 70.210 to 70.320 [on cooperation by political subdivisions under contract], the following terms mean:

* * *

"(2) 'Political subdivision,' counties, townships, cities, towns, villages, school, county library, city library, city-county

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library, road, drainage, sewer, levee and fire districts, soil and water conservation districts, watershed subdistricts, and any board of control of an art museum." (Emphasis added.)

See, also, Opinion No. 425, Norris, December 14, 1971, in which we concluded that school districts are political subdivisions of the State of Missouri, and so fall under the provisions of Sections 67.330 through 67.390, RSMo 1969, relating to services that promote the economy and efficiency of operations of local government; Opinion No. 312, Crow, November 4, 1970, in which we concluded that school districts are subdivisions of the State and, therefore, the functions they perform are "governmental" functions.

We find no basis for excluding school districts from the coverage of Section 92.350, RSMo 1969. Furthermore, we find no language in Section 92.350 which would indicate that the legislature intended that only political subdivisions of the State within the city's boundaries are subject to its terms.

CONCLUSION

Therefore, it is the conclusion of this office that school districts in St. Louis County, under the provisions of Section 92.350, RSMo 1969, must deduct the St. Louis City Earnings Tax from the wages and salaries of their employees who are residents of the City of St. Louis, and remit the amount withheld (less statutory allowances) to the St. Louis City Collector.

The foregoing opinion, which I hereby approve, was prepared by my Assistant D. Brook Bartlett.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosures:

Opinion No. 312, Crow, November 4, 1970
Opinion No. 425, Norris, December 14, 1971