

TAXATION (CITY SALES):
CITIES, TOWNS & VILLAGES:

94.500 to 94.570, RSMo 1969, by repealing the ordinance imposing the tax, without a subsequent vote of the qualified electors on the question of abolition.

The governing body of a city may abolish a city sales tax previously imposed as provided in Sections

OPINION NO. 39

January 3, 1973

Honorable Edna Eads
State Representative
112 South Pine
Bonne Terre, Missouri 63628



Dear Representative Eads:

This official opinion is issued in response to your request for a ruling on the following question:

"What procedure must be followed for a city to abolish a city sales tax previously imposed as provided in Sections 94.500 to 94.570, Revised Statutes of Missouri. More specifically, can the governing body of the city abolish it by repealing the ordinance imposing the tax, or will a vote of the qualified electors on the question of abolition be required?"

The question arises from the following factual situation, as stated in your request:

"The city of Flat River, after an affirmative vote of the people, imposed a city sales tax on July 1, 1972. Certain persons have indicated interest in the possible repeal of this tax, but sections 94.500 to 94.570 do not set out any procedures to be followed to accomplish this repeal."

Section 94.510(1), RSMo 1969, sets forth the procedure by which a city may impose a city sales tax:

"1. Any city may, by a majority vote of its council or governing body, impose a city

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sales tax for the benefit of such city in accordance with the provisions of sections 94.500 to 94.570; provided, however, that no ordinance enacted pursuant to the authority granted by the provisions of sections 94.500 to 94.570 shall be effective unless the legislative body of the city submits to the voters of the city, at a city or state general, primary or special election, a proposal to authorize the legislative body of the city to impose a tax under the provisions of sections 94.500 to 94.570.

"The ballot of submission shall contain, but not be limited to, the following language:

- For the sales tax
- Against the sales tax

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance and any amendments thereto shall be in effect. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the legislative body of the city shall have no power to impose the tax herein authorized unless and until the legislative body of the city shall again have submitted another proposal to authorize the legislative body of the city to impose the tax under the provisions of sections 94.500 to 94.570, and such proposal is approved by a majority of the qualified voters voting thereon."

Although Sections 94.500 to 94.570 do not provide a specific procedure for repeal of such ordinance, Section 94.550(2) clearly contemplates such a repeal:

"2. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any city for erroneous payments and overpayments made, and may authorize the treasurer to redeem dishonored checks and drafts deposited to the credit of such cities. If any city abolishes the tax, the city shall notify the

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director of revenue of the action at least ninety days prior to the effective date of the repeal and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such city, the director of revenue shall authorize the state treasurer to remit the balance in the account to the city and close the account of that city. The director of revenue shall notify each city of each instance of any amount refunded or any check redeemed from receipts due the city."
(Emphasis added)

We conclude, initially, that a city which has imposed a city sales tax may subsequently abolish it.

The principle is well established that authorization must be found before a referendum can be held by a city on an ordinance enacted by such city.

In the case of City of Mt. Olive v. Braje, 7 N.E.2d 851 (Ill. 1937), the Supreme Court of Illinois said, l.c. 853:

"The legal voters of any such municipality have no inherent or constitutional right to require the governing body to submit any legislation to a referendum. Such requirements exist only by virtue of statutory provisions which the Legislature has the right to impose or withhold. The wisdom of requiring a question to be submitted under certain circumstances, and not under others, is a matter for legislative determination, and not for the courts. . . ."

We conclude, then, that unless Sections 94.500 to 94.570, RSMo 1969, specifically require a referendum upon the abolition as well as the imposition of a city sales tax, no such referendum upon such abolition of such tax may be had.

There remains the question of whether, because Section 94.510 (1), RSMo 1969, requires a referendum upon the imposition of a city

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sales tax by ordinance of the governing body of such city, such section does require such a referendum upon the abolition of that city sales tax. Our conclusion is in the negative.

In the case of In re Condemnation of Property for Park in City of St. Joseph, 263 S.W. 97 (Mo. Banc 1924), the court said, l.c. 102:

"The validity of Ordinance No. 8690, under which these proceedings were had, is assailed and, as a consequence, that the court was without jurisdiction to proceed thereunder. It is not contended that the ordinance is not fair on its face, but that it was enacted by the common council without a vote of the people, and therefore, it did not repeal Ordinance No. 8581, which had been referred to and adopted by the people after having been enacted by the council.

". . . [A]n ordinance enacted under the initiative [Section 7950, RSMo 1919] must be proposed by the people and adopted by them. Such an ordinance cannot be repealed or amended, except by a vote of the people.

"There is an absence of this limitation in section 7951 regulating the submission of ordinances to the people for their approval or rejection which have been enacted by the council. . . . Having been enacted and approved, it [an ordinance] is nevertheless equally subject to the legislative will as to amendment or repeal as though it had not been referred. . . . Legislative action concerning a referred statute, whether it be state or municipal, is held in abeyance only until after it has been approved or rejected by the people. . . ."

From the above authorities it is evident that the governing body of a city may repeal its ordinance imposing a city sales tax, and that such repeal will be effective without being referred to a vote of the people.

CONCLUSION

Therefore, it is the opinion of this office that the governing body of a city may abolish a city sales tax previously imposed

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as provided in Sections 94.500 to 94.570, RSMo 1969, by repealing the ordinance imposing the tax, without a subsequent vote of the qualified electors on the question of abolition.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,

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

JOHN C. DANFORTH
Attorney General