

ORDINANCES:
TAXATION (CITY SALES):

The one percent city sales tax act in the City of St. Louis is a valid levy after March 22, 1973, thus the Director of Revenue is required to continue to collect the tax.

OPINION NO. 163

July 24, 1973

Mr. James R. Spradling
Director, Department of Revenue
Room 401, Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Spradling:

You submitted the following question to this office:

"Is the 1% city sales tax in the City of St. Louis a valid levy after March 22, 1973, such that the Director of Revenue can continue to collect the tax by requiring retailers to add it to their purchase price and thereafter remit it to the Department of Revenue?"

The answer to this question will be compelled by our answer to the basic question contained in this opinion request, whether the Board of Aldermen of the City of St. Louis can extend the city sales tax in the City of St. Louis for an additional year by passing an ordinance to that effect prior to the expiration of the prior year's extension but after the date stated in a prior ordinance for the enactment of legislation extending the operation of the act.

In 1970, pursuant to the authority granted by House Bill No. 243, enacted by the 75th General Assembly (now Section 94.500, RSMo 1969), the City of St. Louis submitted to the voters of that jurisdiction the question of whether they desired to levy a one percent city sales tax. The voters approved this levy on March 3, 1970.

The initial ordinance levying the sales tax provided for a two-year levy to commence at the time the sales tax could first be imposed. That date was July 1, 1970. In addition, Section IV of the ordinance provided:

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". . . and said sales tax shall remain in effect and be collected for a period of two (2) years only from its first effective date after which the tax imposed hereby shall expire, fail and be collected no longer unless, by ordinance enacted at least 90 days before the date of expiration as herein provided, said tax is extended for an additional year and, from year to year thereafter in like manner."

On March 23, 1972, the City of St. Louis enacted Ordinance No. 56154 which levied the sales tax for an additional year commencing March 23, 1972. However, this ordinance changed the termination date from July 1 to March 23, 1973. This ordinance incorporated by reference the provision from the prior ordinance that contained the requirement that the renewing ordinance be enacted at least ninety days before the date of expiration.

On February 13, 1973, Ordinance No. 56439, an ordinance extending the city sales tax for an additional year was enacted. Since the 1972 ordinance had changed the expiration date of the tax to March 22, 1973, this enactment was not accomplished within the 90-day limit established by the initial ordinance levying the city sales tax and incorporated by reference in subsequent ordinances thereafter.

Determinative of the issue in this case is the question of whether the action of a prior legislative body in enacting the 90-day provision could bind succeeding Boards of Aldermen from reenacting the city sales tax prior to the expiration date of prior ordinances. While this precise question has never been presented to an appellate court in this state, a number of analogous decisions have been rendered by the Missouri Supreme Court and the United States District Court for the Eastern District of Missouri. In the decisions of St. Joseph Board of Public Schools v. Gaylord, 86 Mo. 401 (1885); State ex rel. Heimberger v. Board of Curators of University of Missouri, 188 S.W. 128 (Mo. banc 1916); State ex rel. City of Springfield v. Smith, 125 S.W.2d 883 (Mo. banc 1939) and United States v. National Garment Co., 10 F.Supp. 104 (E.D. Mo. 1935), the principle that a legislative body could not, by mere enactment, restrict the legislative powers of any of its successors was enunciated. In this case, the Board of Aldermen of the City of St. Louis have the power to reenact the city sales tax ordinance prior to the expiration date thereof. The attempt to require that said enactment occur ninety days prior to the expiration date of the ordinance is an impermissible impingement upon the legislative power of succeeding Boards of Aldermen. Since this 90-day requirement is not compelled by either the Constitution or statutes of Missouri, or the City Charter, it is of no effect, in this case.

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A leading treatise observed that:

"Statutes may authorize and direct cities or towns to change specified ordinances: . . . within a given time, to conform to law. In such new case new ordinances are not required but amendment of existing ordinances will answer. The change is valid although not made within the time prescribed." 6 McQuillen, Municipal Corporations, Section 21.02

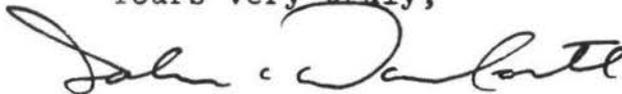
In a case in which the statute required that municipal ordinances be revised within one year, and a revision was not accomplished until after that date, it was held that the revision was not absolutely void because not made within the time specified. Lowry v. City of Lexington, 68 S.W. 1109 (Ky.App. 1902).

CONCLUSION

It is the opinion of this office that the one percent city sales tax act in the City of St. Louis is a valid levy after March 22, 1973, thus the Director of Revenue is required to continue to collect the tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Peter H. Ruger.

Yours very truly,



JOHN C. DANFORTH
Attorney General