



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

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JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 55

Honorable David Q. Reed
Representative, District 29
2010 Traders National Bank Building
1125 Grand Avenue
Kansas City, Missouri 64106

Dear Representative Reed:

This letter is in response to your questions asking:

"1. Does the establishment by a constitutional charter city of a fixed-sum occupational license tax for some classes of taxpayers and the establishment of an occupational license tax rate graduated in proportion to annual gross receipts for other classes, violate the principal of equal protection of the law as guaranteed by Amendment 14, Constitution of U.S., and Article I, Section 2, Constitution of Missouri, 1945, as applied to such taxpayers?

"2. Does such a tax scheme offend against the uniformity of taxation requirements of Article X, Section 3, Constitution of Missouri, 1945.

"3. Do the requirements of Sec. 148.440, R.S. Mo., providing a fixed fee '***in lieu of all taxes and licenses which the city may possess the power to impose***' conflict with the provision of Sec. 92.030(1), R.S.Mo. which authorizes cities to tax real and tangible personal property within their jurisdiction on the basis of value and does Section 148.440, R.S.Mo. further conflict with Article X, Sec. 4(b) Constitution of Missouri 1945, which requires that

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that property in classes land 2 (real property and tangible personal property) be assessed on the basis of value?

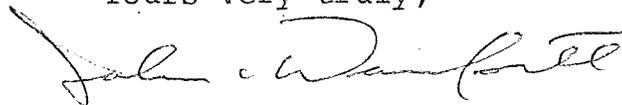
"4. With respect to constitutional charter cities, do the provisions of Section 148.440, R.S.Mo., which require municipal collectors of revenue to issue occupational licenses to insurance companies and to renew such licenses from year to year upon demand, conflict with Article VI, Section 22, Constitution of Missouri, 1945, which provides in part: 'Section 22. No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution***'"

In answer to the constitutional questions posed by your questions 1, 2, 3, and 4, it is our view that such constitutional provisions are not violated in the premises.

It is a well-settled principle of constitutional construction that only when there is a clear conflict between a legislative enactment and the Constitution are the courts warranted in declaring the law to be void. In the Matter of Burris, 66 Mo. 442, 450 (1877); Borden Company v. Thomason, 353 S.W.2d 735, 743 (Mo. Banc 1962). We find no clear violation and therefore conclude that the courts would uphold such provisions.

With respect to your third question asking whether Section 148.440, RSMo, is in conflict with Section 92.030, RSMo, we are of the view that since the former section is to be construed as referring to municipal occupational license taxes and the latter to ad valorem taxes there is no conflict.

Yours very truly,



JOHN C. DANFORTH
Attorney General