



OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

April 10, 1974

OPINION LETTER NO. 139

Honorable James N. Riley
Representative, District 88
Room 402, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Riley:

This is in response to your request for an opinion from this office as follows:

"Whether the City of Maplewood as a third class city is empowered under sections 94.020 R.S. Mo. and 94.080 R.S. Mo. or otherwise to enact an ordinance establishing a penalty and/or interest for the non-payment of ad valorem taxes.

"Maplewood presently has an ad valorem tax and is considering enacting a 50% penalty and/or 8% interest if permissible."

We understand that you are inquiring about an ad valorem tax on merchants.

The city of Maplewood is a third class city, and the assessment and taxation of property is governed by Chapter 94, RSMo.

Section 94.020, RSMo, to which you refer, provides as follows:

"The city council shall, from time to time, provide by ordinance for the levy and collection of all taxes, licenses, wharfage and other duties not herein enumerated, and

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for neglect or refusal to pay the same shall fix such penalties as are now or may hereafter be authorized by law or ordinance."

This section has been in effect in the same language since 1893. Laws of Missouri 1893, page 65.

Section 94.080, RSMo, provides as follows:

"The council shall have power to levy, and all merchants shall pay to the city collector, an ad valorem tax equal to that which is levied upon real estate; the amount of which tax shall be determined and ascertained in the same way as the state and county tax is determined and ascertained; and the collector shall have power to enforce the payment of the same by seizure and sale, as in the collection of other taxes."

This section has been in effect in the same language since 1893. Laws of Missouri 1893, page 65. In our view Section 94.080 deals with a particular subject of taxation and is applicable with respect to the merchants tax.

The tax provided for under Section 94.080 is a property tax and not a licensing tax, and the amount of the tax is to be determined and ascertained in the same way as state and county taxes are determined, and the collector is to enforce the payment of the same by seizure and sale as in the collection of other taxes. State ex rel. Carleton Dry Goods Co. v. Alt, 123 S.W. 882 (Mo. 1909).

Section 94.150, RSMo, provides as follows:

"The enforcement of all taxes authorized by sections 94.010 to 94.180 shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes, including the seizure and sale of goods and chattels, both before and after said taxes shall become delinquent; provided, that all suits for the collection of city taxes shall be brought in the name of the state, at the relation and to the use of the city collector."

Under the above section, the enforcement of all city taxes authorized under Chapter 94 is made in the same manner and under the

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same rules and regulations as provided by law for the collection and enforcement and payment of state and county taxes, and all suits for the collection of city taxes is to be brought in the name of the state at the relation and to the use of the city collector.

City of Westport ex rel. Kitchen v. McGee, 30 S.W. 523 (Mo. 1895) was a suit to collect city real estate taxes for the year 1891. The court found a verdict for the plaintiff in the sum of \$175, with interest at the rate of 12% per annum. Appellant objected to the rate of interest. In discussing this question, the court stated, l.c. 525:

"2. Appellant's point as to the rate of interest charged is not well taken. Section 7605, Rev. St. Mo. 1889, provides that, as to state and county taxes, any taxpayer who fails to pay his taxes on a fixed date is chargeable by the collector with a 'penalty' (sometimes also called 'interest') of 1 per cent. per month. The statute calls this an 'additional tax' or 'penalty.' Section 1604, Id., provides that the payment of all taxes in such cities shall be enforced by collection in the same manner, and under the same rules and regulations, as may be provided by law for collecting and enforcing the payment of state and county taxes. The imposition of a penalty is a regulation for the collection of the tax, and ordinarily the most effective."
(Emphasis added)

Section 7605, RSMo 1889, is now Section 139.100, RSMo. It provides for the collector to collect an additional tax, "as penalty," the amount provided for in Section 140.100, RSMo, from any taxpayer who fails or neglects to pay the collector his taxes when due. The above case involved the collection of a city real estate tax. The question we have under consideration is the collection of a city merchants ad valorem tax.

Section 150.235, RSMo, provides:

"Any person who shall fail to pay to the collector of revenue any merchants' and manufacturers' tax on the property of such person in said county on or before the thirty-first day of December next after the same shall have been assessed and levied, such tax shall be deemed delinquent, and said delinquent taxpayer shall pay in addition to such taxes -

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which said taxpayer may stand charged on the tax books of such county a penalty of one percent per month plus ten percent interest, provided that such penalties shall not exceed more than ten percent per annum."

Under the above-statutory provisions, it is our opinion that in a third class city which levies an ad valorem merchants tax the amount of the tax shall be determined and ascertained in the same way as state and county taxes are determined and ascertained and that the only penalties that may be provided for the nonpayment and collection of the same are those which are provided for in the collection of state and county merchants taxes.

It is our view that a city of the third class has power under Section 94.080, RSMo, to levy a merchants tax equal to that which is levied upon real estate, the amount of which tax shall be determined and ascertained in the same way as state and county taxes are determined and ascertained and the only penalty for failure to pay the same is that which is provided for for failure to pay state and county merchants taxes under Chapter 150, RSMo.

Yours very truly,



JOHN C. DANFORTH
Attorney General