BOWLING:
BILLIARDS:
POOL TABLES:
TAXATION (SALES & USE):

Charges for the use of billiard, pool, bowling, and similar amusement or recreational facilities are subject to Missouri state sales tax under Section 144.020, subsection 1(2), RSMo Supp. 1973 (Senate Bill No. 407, 77th General Assembly).

OPINION NO. 202
Reinstated May 24, 1977

May 10, 1974

FILED
202

Mr. James R. Spradling
Director of Revenue
Department of Revenue
Jefferson State Office Building
Jefferson City, Missouri 65101

Dear Mr. Spradling:

This official opinion is issued in response to your request for a ruling on the question of whether the opinion of the Attorney General, No. 68, issued August 21, 1937, to Edwin C. Orr, is still considered accurate and valid. That opinion held that charges paid by persons for the privilege of playing games of billiards, pool, bowling, or similar amusements are not subject to the Missouri sales tax.

Your question turns upon the interpretation of Section 144.020, subsection 1(2), RSMo Supp. 1973 (Senate Bill No. 407, 77th General Assembly). That statute provides as follows:

> "1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:
>
> * * *
>
> (2) A tax equivalent to three percent of the amount paid for admission and seating accommodations or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events;"

In addition, Section 144.010, subsection 1(8)(a), RSMo 1969, defines the term "sale at retail" to include:

> "(a) Sales of admission tickets, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events;"

Substantially similar provisions were present in Missouri's sales tax statutes at the time this office issued Opinion No. 68 in 1937. However, we believe the logic of that opinion was faulty and it should not be followed:

The 1937 opinion cited the general principle that taxing statutes are to be construed strictly against the taxing authority. However, it has been held that this general rule:

> ". . . does not require that language of a taxing statute be ignored and not given a meaning which reasonably accords with 'the apparent intention of the Legislature as expressed in the statute, with a view to promoting the apparent object of the legislative enactment.' . . ." State ex rel. Thompson Stearns-Roger v. Schaffner, 489 S.W.2d 207 (Mo. 1973), at 215.

The 1937 opinion stated that charges for playing the games in question here "were not taxed under the 1% Sales Tax Act of 1935," which was virtually identical to the present statute except that the words "or in" were not included in the predecessors of Section 144.020, subsection 1(2) and Section 144.010, subsection 1(8)(a). The opinion continued by stating that the addition of the words "or in" did not sufficiently change those two provisions to include the charges in question within the scope of the sales tax act.

But the opinion did not explain why the original 1% Sales Tax Act of 1935 did not tax such charges. We believe that its terms were in fact broad enough to make such charges taxable, and a fortiori, that such charges are taxable under the present sales tax law. Section 144.020, subsection 1(2), uses disjunctive language to distinguish "admission and seating accommodations" form "fees" in places of amusement, entertainment or recreation, games and athletic events. The term "fees" indicates a type of charge different from a mere admission or seating charge; it is sufficient to encompass a fee for the use of billiard tables and balls, bowling alleys, and the like for the amusement or recreation of the user. We believe this is the most reasonable interpretation of the legislature's intention in enacting a comprehensive scheme of sales taxation which includes a tax on "fees paid to or in" places of amusement,

entertainment, or recreation. We can see no indication in the statute that the legislature intended to exclude charges for playing billiards, pool, or bowling from the scope of the sales tax law. Opinion No. 68, rendered August 21, 1937, to Edwin C. Orr, is hereby withdrawn.

CONCLUSION

Therefore, it is the opinion of this office that charges for the use of billiard, pool, bowling, and similar amusement or recreational facilities are subject to Missouri state sales tax under Section 144.020, subsection 1(2), RSMo Supp. 1973 (Senate Bill No. 407, 77th General Assembly).

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

Very truly yours,

JOHN C. DANFORTH
Attorney General

May 24, 1977

This opinion issued by Attorney General John C. Danforth, May 10, 1974, was withdrawn November 3, 1975, because of L & R Distributing, Inc., et al v. Missouri Department of Revenue, 529 S.W.2d 375 (Mo. 1975). The opinion is being reinstated due to the decision of the Missouri Supreme Court in the case of Blue Springs Bowl v. James R. Spradling, No. 59523, decided May 10, 1977.

John Ashcroft

JOHN ASHCROFT
Attorney General