

ASSESSORS:
TAXATION:
ASSESSMENTS:
CONSTITUTIONAL LAW:

Senate Bill No. 402, 77th General Assembly (1974) is unconstitutional in that it violates Article X, Section 4(a) of the Constitution of Missouri.

OPINION NO. 261

September 18, 1974

Mr. J. E. Riney, Chairman
State Tax Commission
Post Office Box 146
Jefferson City, Missouri 65101



Dear Mr. Riney:

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

"Are the provisions of Senate Bill No. 402, passed by the 77th General Assembly and approved by the Governor, which create a separate class of merchant known as 'motor vehicle dealers' and provide that motor vehicles and goods, wares, and merchandise held by such dealers are to be treated in a special manner with regard to ad valorem tax, constitutional in view of the restrictions in Article X, Section 3 of the Missouri Constitution prohibiting the levying and collecting of taxes in a nonuniform manner?

"If the act is constitutional, does it prohibit cities from collecting personal property tax on motor vehicles or goods, wares, and merchandise belonging to a 'motor vehicle dealer' based upon the true value in money of such merchandise?

"Subsection 2(3) of Section 1 of the act provides a tax of 57¢ on the goods, wares and merchandise other than motor vehicles belonging to a motor vehicle dealer. Does this tax rate apply to each part or piece of equipment maintained by a motor vehicle dealer in his inventory, and how and when is such tax to be collected?"

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Article X, Section 3 of the Constitution of Missouri, to which you make reference in your question, provides as follows:

"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. Except as otherwise provided in this constitution, the methods of determining the value of property for taxation shall be fixed by law."

Article X, Section 4(a) of the Constitution of Missouri further provides as follows:

"All taxable property shall be classified for tax purposes as follows: class 1, real property; class 2, tangible personal property; class 3, intangible personal property. The general assembly, by general law, may provide for further classification within classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types."
(Emphasis added.)

Senate Bill No. 402, 77th General Assembly (1974), provides as follows, in pertinent part:

"Section 1. As used in this act, unless the context clearly requires otherwise, the following terms mean:

(1) 'Motor Vehicle dealer' any person, firm, corporation, copartnership or association of persons primarily engaged in the business of selling motor vehicles, except farm tractors.

* * *

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"2. Motor vehicles and the stock of goods, wares and merchandise held for use and sale by motor vehicle dealers in the ordinary course of their business are hereby classified as a separate class of personal property and in lieu of ad valorem personal property taxes, thereon, the value thereof is fixed and a motor vehicle property tax is imposed thereon as follows:

- (1) New motor vehicles
2.43 Dollars, (\$2.43).
- (2) Used motor vehicles
1.50 Dollars, (\$1.50).
- (3) Goods, wares, and merchandise other
than motor vehicles
0.57¢ Dollars, (\$0.57)."

It is our opinion that Senate Bill No. 402 clearly violates Article X, Section 4(a) of the Constitution of Missouri. It declares "Motor vehicles and the stock of goods, wares and merchandise held for use and sale by motor vehicle dealers in the ordinary course of their business . . ." to be a separate class of personal property. The aforesaid constitutional provision prohibits classification of tangible personal property (which motor vehicles, goods, wares and merchandise certainly are) on the basis of the nature or business of the owner thereof. To classify some motor vehicles, goods, wares and merchandise in a different class from other motor vehicles, goods, wares and merchandise simply because they are held for use and sale by "motor vehicle dealers," rather than by other persons, is clearly a violation of the Constitution of Missouri.

Nor do we believe that any portion of Senate Bill No. 402 can be saved by Section 1.140, RSMo 1969, which provides as follows:

"The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

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It is our view that the intent of Senate Bill No. 402, taken as a whole, was to classify all tangible personal property held by motor vehicle dealers, as therein defined, as a separate class of personal property. This follows from the portion of Senate Bill No. 402 which provides that:

"The term 'merchant' includes motor vehicle dealers as defined in this act, but motor vehicle dealers shall not be subject to any ad valorem tax on his stock of goods, wares and merchandise, as otherwise prescribed by this chapter and a motor vehicle property tax as prescribed by this act shall be levied in lieu of such ad valorem tax."

This provision clearly evidences a legislative intent to classify all property held by motor vehicle dealers in a different fashion from property not held by motor vehicle dealers. Even if any portions of Senate Bill No. 402, taken separately, would be constitutional, it is our opinion that the elimination of the unconstitutional portions of the act would leave "the remaining portions of the statute so that they do not express the true legislative intent but are instead in conflict with it," so that, taken as a whole, "the statute should not be upheld." Preisler v. Calcaterra, 243 S.W.2d 62 (Mo. Banc 1951).

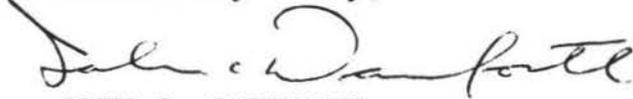
Because we believe that Senate Bill No. 402 is unconstitutional in its entirety, we do not believe it necessary to answer your other questions about its potential application.

CONCLUSION

Therefore, it is the opinion of this office that Senate Bill No. 402, 77th General Assembly (1974) is unconstitutional in that it violates Article X, Section 4(a) of the Constitution of Missouri.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General