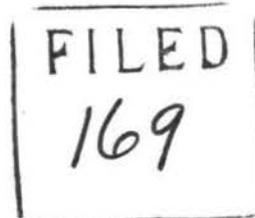


July 22, 1975

OPINION LETTER NO. 169
Answer by Letter - Klaffenbach

Mr. Ronald L. Boggs
Prosecuting Attorney
St. Charles County
County Court House
St. Charles, Missouri 63301



Dear Mr. Boggs:

This letter is in response to your question asking:

- "1. Does any part of RSMo. 1969 Chapter 343 require that the license tax collected pursuant to Section 343.080 be paid to the State of Missouri?
- "2. Is the County of St. Charles authorized to retain the taxes collected pursuant to Section 343.080?
- "3. Does any part of Chapter 343 require that any part tax collected pursuant to Section 343.080(1)(2) and (3) be paid to the State of Missouri under any circumstance?
- "4. Are the provisions of Section 343.080 and Section 343.240 compatible or in conflict? If in conflict, which controls?
- "5. If taxes collected for auctioneer's licenses are exactly as set out in Section 343.080 are they graduated as the word is used in Section 343.240?

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- "6. In Section 343.240 does 'graduate' mean 'increase'?
- "7. Is a part of the auctioneer's license tax collected to be paid to the State of Missouri only if that tax is in excess of the amounts set out in Section 343.080?"

The purpose of Chapter 343 is apparently to license certain auctioneers and to impose a duty upon certain sales. The license provisions are in the nature of taxation provisions because no qualifications for licensing are set forth and they are referred to as taxes and levies.

The first licensing act was enacted in 1820 but is substantially different from a 1855 revision. The latter remains substantially the same to date. The 1855 laws contained specific licensing fees which were greater than those in the present statutes. See Section 343.080. For some reason the 1855 laws additionally provided in Section 24 thereof that:

"The county courts of the several counties in this State, except the County Court of the county of St. Louis, shall have power to graduate the license tax, to be imposed on each license to be granted under the provisions of this act: Provided, That such tax to the State shall not be less than twenty, nor more than one hundred dollars, on each license for six months."

The above quoted section was amended in 1877 omitting the exception of the county court of St. Louis County and amending the proviso as follows:

". . . Provided, That such tax to the State shall not be less than ten nor more than one hundred dollars on each license for six months, and such tax to the county shall not be less than the amount charged for State purposes.

"Sec. 2. All acts and parts of acts inconsistent with this act are hereby repealed."

As we noted the reasoning behind the enactment of these predecessor sections to what is now Section 343.240, RSMo, escapes us, although it does appear that the repealer provision of Section 2

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of the 1877 laws was merely declaratory of the common law and was not intended to specifically repeal any particular part of the Laws of 1855, including Section 343.080, setting forth particular license fees.

It appears therefore that, at least prior to further amendments in 1955 reducing the levy upon every license, the county courts did have some power to "graduate the license tax to be imposed on each license to be granted." However, the Laws of 1955, page 654, Section 1, reduced the license levy to the amounts presently provided in Section 343.080 making it arguable at least that the legislature had definite limitations in mind and also arguable that the amendments to Section 343.080 impliedly repealed Section 343.240. Still, we do not believe that such amendments can be said to have repealed Section 343.240 because the amendments only reduced the amount of the license taxes and did not purport to expressly repeal Section 343.240 which could have been readily accomplished if such were intended. In this respect it should also be borne in mind that Section 343.240 was first enacted concurrently with Section 343.080 in 1855. Therefore whatever the legislature had in mind it seems clear that the county courts were given express authority to graduate the license tax within the limitations provided.

The courts, of course, have an absolute latitude in interpreting legislative intent that this office does not possess. Therefore, we are unable to predict how a court would rule in these premises.

It is our view however that the tax originated as a state tax in 1820 and remains a state tax despite the 1855 provisions because Section 343.240 treats such tax as a state tax.

However, under provisions of Section 343.240 there is found authority for the county to levy a tax payable to the county in addition to the amount charged for state purposes.

It is our further view however that the absolute lack of clarity in the provisions we have discussed suggests that, unfortunately, a declaratory judgment is the only realistic way of resolving this dilemma and that such should be sought by the county before attempting to exercise authority pursuant to Section 343.240.

Very truly yours,

C. B. Burns, Jr.
Assistant Attorney General