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December 29, 1977

OPINION LETTER NO. 236

Dr. Richard J. Judd
Acting Director
Missouri Department of Revenue
Jefferson Building
Jefferson City, Missouri 65101

Dear Dr. Judd:

This letter is in response to a request for an opinion on the following question:

"Is the Director of Revenue obligated under section 94.530, RSMo to begin collecting a one percent city sales tax for the Village of Country Life Acres, Missouri, when the ordinance calling for a special election to be held on September 28, 1977 on the sales tax proposition was adopted and approved by the governing body of the city prior to the effective date of the amendment to section 94.500 of the City Sales Tax Act, . . ."

It is our understanding that Country Life Acres, Missouri, a village of less than 500 population, authorized a special election dealing with city sales tax by Ordinance No. 148, passed and adopted on August 22, 1977. At a special election held on September 28, 1977, the voters of the village of Country Life Acres voted in favor of a proposition imposing a sales tax of one percent on the receipts from the sale at retail of all tangible personal property and taxable services at retail within the Village of Country Life Acres. Ordinance No. 6.09, imposing the sales tax, was adopted on the same day by the Board of Trustees in response to the favorable vote.

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In House Bill No. 165, the 79th General Assembly passed an act repealing § 94.500, RSMo 1969, and replacing it with a new section which changed the definition of the term "city." The effective date of this act was September 28, 1977. Prior to that time, the City Sales Tax Act, §§ 94.500 to 94.570, was available only to those cities having a population of 500 or more. See §§ 94.500(1), RSMo 1969, and 144.460, RSMo 1975 Supp.

In Opinion No. 359, issued December 10, 1969, to the Honorable William C. Phelps, this office concluded that a city could not, before the effective date of the City Sales Tax Act, pass an ordinance levying a sales tax in accordance with the provisions of the Act, and call a special election thereon to be held subsequent to the effective date of the Act. However, that opinion has been withdrawn.

Section 94.510, RSMo 1969, the section setting forth the procedures by which a city may impose a city sales tax, is identical in form with the provisions of House Committee Substitute for Senate Substitute for Senate Bill No. 234, 79th General Assembly, which set up procedures for the imposition of a countywide sales tax effective September 28, 1977. In Opinion No. 237, issued December 20, 1977 (copy enclosed), this office interpreted the activities of the governing body prior to the election of the people as being preliminary in nature such that action by the governing body prior to the effective date of the legislative act would not invalidate any tax adopted by a vote of the people subsequent to the date of the act.

In our opinion, the same interpretation is applicable to this matter. Under the provisions of § 94.510, RSMo 1969, of the City Sales Tax Act, adoption of the tax cannot be accomplished until the vote of the people authorizes and effectuates the imposition of the tax. In reviewing the activities of the governing board of Country Life Acres, it is apparent that Ordinance No. 148 was passed in anticipation of the effective date of H.B. No. 165. However, the activities of the governing body did not affect the substantive rights of taxpayers within the city. As of the date of the special election, September 28, 1977, the Village of Country Life Acres was allowed by law to impose a city sales tax.

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After the tax had been adopted by a majority vote of the persons voting in the special election, the results were certified to the director of revenue in accordance with subsection 3 of Section 94.510. Under these circumstances, it is our opinion that you have been presented with sufficient notice of the adoption of a valid taxing ordinance in the Village of Country Life Acres to cause you to perform your duties under the provisions of § 94.530, RSMo 1969.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John Ashcroft", written in dark ink.

JOHN ASHCROFT
Attorney General

Enc: Op. No. 237
12/20/77