CO-OPERATIVE ASSOCIATIONS: The Pure Milk Producers Assoc. of Kansas City, Missouri, is not exempt from payment of a merchant's tax levied by the County Court of Jackson County Missouri.

TAXES:

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July 13, 1953

John M. Dalton

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John C. Johnsen

Honorable Hilary A. Bush
County Counselor
Suite 202, Courthouse
Kansas City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

> "The County Court of Jackson County has requested that I ask your opinion on the following set of facts:
>
> "The Pure Milk Producers Association of Greater Kansas City, Inc., has requested that a Merchant's Tax assessed against them in this county be abated by reason of Section 274.180 R.S.Mo. '49.
>
> "The Court requests your opinion as to whether or not the provisions of this section exempts such a corporation from Merchant's Tax."

While you do not so state, we assume from the nature of your inquiry, and from your reference to Section 274.180, RSMo 1949, which section relates only to co-operative associations, that the Pure Milk Producers Association of Greater Kansas City, Inc., is a co-operative association within the meaning of Chapter 274, RSMo 1949. Section 274.180, to which you refer, reads as follows:

> "Each association organized hereunder shall pay an annual fee of ten dollars only, in lieu of all franchise or license or corporation or other taxes, or taxes or charges upon reserves held by it for members."

The question before us is whether, in view of the above section, and in view of the further fact that the Pure Milk Producers Association is a co-operative association, the Pure Milk Producers Association is exempt from paying a merchant's tax in Jackson County.

On this point, we would call attention to the fact that a merchant's tax is a property tax. In the case of American Manufacturing Company v. City of St. Louis, 192 SW 402, the court held that an ad valorem tax levied under the laws of Missouri upon merchants and manufacturers was a tax upon property as distinguished from a tax upon business.

In the case of State ex rel. v. Carelton Dry Goods Co. v. Alt, 123 SW 882, the court held that the taxation of merchants and manufacturers, though in form a license tax, was in fact a property tax and not merely an occupation or license tax.

In the case of State ex rel. St. Louis Public Schools v. Tracy, 6 SW 709, the court held that a merchant's tax was a personal property tax. Numerous other cases could be cited to substantiate this point, but we do not feel that such is necessary as it is well established in Missouri law that a merchant's tax is a property tax.

Section 274.180, supra, clearly states that the "annual fee of ten dollars", is "in lieu of," or substitution for, "all franchise or license or corporation * * * taxes." In other words, the statute states that when the annual fee of ten dollars is paid, the co-operative association shall not pay a franchise, license, or corporation tax. But the statute goes further than that, and states that after payment of the annual fee of ten dollars, the co-operative association shall not pay "other taxes, or taxes or charges upon reserves held by it for members."

The question which we now have before us is whether the term "other taxes", in the exemption part of the statute, includes property taxes, which we held above a merchant's tax, to be. On its face it would appear that the term "other taxes" was all inclusive. However we do not believe that actually it is so. It will be noted that the term "or other taxes" follows immediately after the listing of "franchise or license or corporation" taxes. We believe, therefore, that the rule of ejusdem generis is applicable in this instance. That rule, as stated at l. c. 398 in the case of Zinn v. City of Steelville, 173 SW (2) 398, is:

> "* * * where general words in statute or ordinance follow specific words, designating special things, general words will be considered as applicable to things of same general character as those which are specified."

In our situation, of course, the "specific words" designated are "franchise or license or corporation", and the "general words" are "or other taxes." If, therefore, "franchise or license or corporation" taxes are not "property taxes", then the general words "or other taxes" could not refer to property taxes, and the Pure Milk Producers Association would not, by reason of those words, be exempt from paying a merchant's tax, which, we have pointed out, is a property tax.

We do not believe that the specified taxes, i. e., franchise, license, and corporation, are property taxes, but that they are excise taxes. In this regard, we direct attention to the case of General American Life Insurance Company v. Bates, 249 SW (2d) 458, which at l. c. 462, states:

> "We consider the nature of the tax before taking up respondents' cases most directly in point. Taxes fall into three natural classifications: capitation or poll taxes, taxes on property, and excises. State ex rel. Missouri Portland Cement Co. v. Smith, 338 Mo. 409, 413 [1, 2], 90 S. W. 2d 405, 406 [2]; State ex rel. Tompkins v. Shipman, 290 Mo. 65, 75 (III), 234 S. W. 60, 62 (III). The instant case involves a property tax expressly so designated in the constitution, Art. 10 § 4, quoted supra, and made subject to specific constitutional inhibitions. Excises include '"* * * every form of taxation which is not a burden laid directly upon persons or property; in other words, excises include every form of charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation."' State ex rel. Missouri Portland Cement Co. v. Smith, supra [338 Mo. 409, 413 [1, 2], 90 S W 2d 407]; State ex rel. Tompkins v. Shipman, supra; Viquesney v. Kansas City, 305 Mo. 488, 495 (I-V), 266 S. W. 700, 702 [1-10]; 51 Am. Jur. 61, § 33; 33 C. J. S., Excise, page 110."

Also, to Section C, page 446, Vol. 53, Corpus Juris Secundum, which states:

> "A 'license fee' or, as it is otherwise called, a 'license tax,' the two terms generally being regarded as synonymous, since the requirement of payment for a license is only a mode of imposing a tax on the licensed business, is the sum exacted for the privilege of carrying on a particular occupation or business. The term has been used indiscriminately to designate impositions exacted for the exercise of privileges of all kinds, and has been held to include an occupation tax, privilege tax, and excise tax, although, as discussed infra § 3, it is in strict usage distinguishable from such other taxes.
>
> "Consumption or use tax. A 'consumption' or 'use' tax is an excise tax on the consumption or use of property, which is imposed on the user.
>
> "Excise tax. The term 'excise tax' as used within the scope of the subject of licenses has generally been defined as a tax laid on a license to pursue certain occupations, corporation privileges, sales, or consumption of commodities, although it may also have the broader meaning of any tax which is not a burden laid directly on persons or property, as discussed in the definition Excise, 33 C. J. S. p 110 note 4-p 111 note 7, in Internal Revenue § 1, and in the C. J. S. title Taxation § § 121-124, also 61 C. J. p 242 note 74-p 244 note 3. * * *"

In the case of Commonwealth v. Quaker Oats, 350 Penn. 253, it was held that a franchise tax imposed on a foreign corporation was an excise tax. In the case of Shannon V. Streckfus Steamer, 279 Ky. 649, it was held that the term license tax was synonymous with the term excise tax.

In view of the above, we believe that it is clear that franchise, license and corporation taxes are not property taxes; that by reason of the manner of its use in Section 274.180, supra, the rule of ejusdem generis applies to the words "or other taxes", which means that the words "or other taxes" do not refer to property taxes, and that since a merchant's tax is a property tax, that the words "or other taxes" as used do not create an exemption as to the payment of a merchant's tax.

We may say further that even if the rule of ejusdem generis did not apply to the words "or other taxes" in Section 274.180, supra, and that if the words "or other taxes" did refer to property taxes, that it would be our opinion that such portion of Section 274.180 would be void because contrary to the Constitution of Missouri. Section 6 of Article X of the Missouri Constitution states:

> "Exemptions from Taxation.--All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation: and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

In the light of the above, in order for a law exempting property from taxation to be valid, such exempted property would have to fall into at least one of the classifications set forth in Section 6 of Article X, supra. The only class into which the Pure Milk Producers Association, a co-operative association, could possibly fall would be "agricultural and horticultural societies."

In this regard we call attention to Section 11, page 388, Vol. 3, Corpus Juris Secundum, which reads:

> "An agricultural society is a society for promoting agricultural interests, such as

> the improvement of land, of implements, or of livestock. It is, in a sense, an educational institution, but may furnish harmless amusement as well.
>
> "The nature of an agricultural society depends on the statute creating it. It may be a public, quasi-public, or a private, corporation. An agricultural society is not necessarily a public corporation or organization because it exists for a public purpose and not for private profit and may be aided by public money or is subject to certain public duties, where the society is free to manage its own affairs; on the other hand, although in the form of a society, it may be a public institution, because of the duty to make certain reports. An agricultural society, it has been held, may be a public organization, somewhat similar to a school district or other municipality, or, on the other hand not a 'municipality,' as the word is generally understood, although supported in part by public revenue; an agency of the state or, on the contrary, not an agency of the state, in this sense; nor an agency of the county but a separate legal entity; a corporation of public character or benefit; in its essential elements, a charitable organization or, on the contrary, not to be classed as such."

We would further call attention to the case of Exposition Driving Park v. Kansas City, 174 Mo. 425. At l. c. 433, the court stated:

> "The exemption of plaintiff's property must, if at all, be authorized by section 6 of article 10 of the Constitution of Missouri, which provides that 'such property, real or personal, as may be used exclusively for agricultural or horticultural societies' may be exempted, and the statute, section 7505, Revised Statutes 1889, then in force, which provides that 'the real estate and personal property which may be used exclusively for agricultural or horticultural societies heretofore organized, or which may hereafter organized in this State, shall be exempted from taxation for State, county, city, or other municipal purposes.'

"Is the plaintiff an agricultural or horticultural society within the meaning of this constitutional provisions, and was this land used exclusively for such a society? The contention of plaintiff is that a business corporation organized as it was under article 8 of chapter 21, Revised Statutes 1879, section 929, for the purpose, among others, of encouraging agricultural and horticultural pursuits 'and to establish and maintain a race course and promote athletic and other sports and amusements,' is an agricultural and horticultural society within the meaning of the Constitution.

"In the ascertainment of the meaning of any law, fundamental or statutory, it is legitimate and even necessary to trace the history of the terms used herein in order to gather their significance. Prior to the adoption of the Constitution of 1875 the Legislature was forbidden to pass any law exempting any property, real or personal, from taxation, except such as should 'be used exclusively for public schools, and such as belonged to the United States, to this State, to counties, or to municipal corporations within this State.' [Constitution of 1865, art. 11, sec. 16.]

"As early as 1853 the General Assembly of this state incorporated the Missouri State Agricultural Society. [Act February 24, 1853.] By an act of the Legislature, approved September 13, 1855, that law was repealed, and a new act adopted dividing the State into agricultural districts, and establishing a society for each, and designating the counties that should constitute such district agricultural society. Their powers were defined by the act.

"Later in 1863 the Missouri State Board of Agriculture was created a body corporate and it was made the duty of all agricultural and horticultural societies to make reports to such State Board.

"The scheme of promoting county agricultural societies will be found in the General Statutes of 1865, pp. 321 to 324. These societies were intended to promote agriculture, manufacturers and raising stock.

> "The county courts were authorized to vote money for premiums and they were adjuncts of the State Board of Agriculture and the presidents of said county socieites were ex-officio members of the State Board of Agriculture, and they were required to make reports of their transactions to the State board."

From the above, we believe that it is clear that the Pure Milk Producers Association is not an "agricultural or horticultural society", within the meaning of Section 6 of Article X of the Missouri Constitution. If, therefore, Section 274.180 attempts to exempt from a property tax the Pure Milk Producers Association, it is void as being in conflict with Section 6 of Article X of the Missouri Constitution which holds that a law cannot be passed exempting from a property tax any property unless such property falls within one of the classifications set forth in said Section 6 of Article X.

In this regard we direct attention to a paralled situation discussed in the case of General American Life Insurance Co. v. Bates, 249 SW (2d) 458. At l. c. 464:

> "Section 6, Art. 10, Mo. Const. 1945, effects two constitutional classes of property: (1) taxable, and (2) exempt. The 'in lieu' statute, Laws 1945, p. 1023, exempts from the intangible personal property tax act, Laws 1945, p. 1914, the intangible personal property of respondents; and in so doing is an unauthorized attempt to reclassify as exempt property not enumerated in said § 6 as exempt but which is there constitutionally classified as taxable property. This, it has been held, the lawmaking power may not do. State ex rel. Tompkins v. Shipman, 290 Mo. 65, 234 S.W. 60, 62 (II-IV). See Life Association of America v. St. Louis Board of Assessors, 49 Mo. 512, 519, 521, which is construed in State ex rel. Missouri State Life Ins. Co. v. Gehner, 320 Mo. 691, 8 S. W. 2d 1068, 1069 (1), as holding a statute providing for the annual payment by certain life insurance companies of $150 to $200 for the support of the insurance department 'in lieu' of all taxes whatsoever contravened the 1865 constitutional provision, Art. 11, § 16, against the exemption of property from taxation."

Honorable Hilary A. Bush

We do not feel that the Association is exempt by reason of Section 137.100, RSMo, 1949.

CONCLUSION

It is the opinion of this department that the Pure Milk Producers Association of Greater Kansas City, Inc., is not exempt from the payment of a merchant's tax levied by the County Court of Jackson County, Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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