SALES TAX: When country clubs serve rooms, meals and drinks strictly to their members and not to the general public, such sales are not taxable if the club itself conducts the selling of the rooms, meals and drinks; if same are sold in the name of the club by private individuals for profit, such sales are taxable.

September 11, 1935

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Honorable Joseph T. Davis
Attorney at Law
Boatmen's Bank Building
St. Louis, Missouri

Dear Sir:

This department is in recept of your letter of August 28 requesting an opinion as to whether or not the Sales Tax Act, which became effective on August 27, 1935, applies to private country clubs. The second paragraph of your letter, which contains your precise question is as follows:

> "The strictly private country clubs located in St. Louis County are organized under the Pro Forma Decree Statute of this State, or are voluntary trusts. All of these clubs are operated for the social and athletic benefits of members, without gain, benefit or advantage of a financial, economic or pecuniary profit. The club does not furnish or sell any of its services, rooms, meals or drinks to the public, and is in no wise engaged in any business in which the public can participate or be served. All of its privileges and facilities are confined exclusively to its regular, subscribing and bona fide members, in which no non-member can participate except as a guest of such member, and even then cannot participate except on the account of such member. In other words, a non-member of such a club cannot purchase any rights, privileges, services, meals or drinks in or upon the premises of such club for any consideration whatsoever."

We note you refer to the fact that most country clubs are organized under a Pro Forma Decree and state that "all of these

clubs are operated for the social and athletic benefits of members, without gain, benefit or advantage of a financial, economic or pecuniary profit." Sec. 1 of the Sales Tax Act, subsection (c) (Laws of Mo. 1935, p. 413-414) defines "business" as follows:

> "'Business', includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect and the classification of which business is of such character as to be subject to the terms of this Act. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business does not constitue engaging in business, within the meaning of this act."

We interpret the above section to mean that it is not an essential element that the business so engaged in be organized for gain, benefit or advantage in such a manner as to profit financially or economically, or that a pecuniary profit be the object. On the other hand, if the business be not organized for the purpose of gain or profit financially but a benefit or advantage be the object or the result of the organization, then, we construe such business to be within the terms of the Act.

Sec. 1, subsection (a) of the Act (Laws of Mo. 1935, p. 413) defines "person" as follows:

> "'Person' includes any individual, firm, co-partnership, joint adventure, association, corporations, municipal or private, estate, trust, business trust, receiver, syndicate or any other group or comination acting as a unit, and the plural as well as the singular number."

It is our opinion that the words "or any other group or combination acting as a unit" cover country clubs and other organizations organized by a Pro Forma Decree.

Having determined that private country clubs come within the term "business", we shall next consider whether or not the Act imposing the equivalent of 1% sales tax actually imposes the same on private country clubs. Sec. 2, subsection (i) (Laws of Mo. 1935, p. 416) provides:

> "A tax equivalent to one per cent. (1%) of the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, tavern, inn, restaurant, eating house, drug store, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public."

Section 2 of the Act places a tax equivalent to 1% of the price paid or charged on the sale of all tangible personal property. Under subsection (e) of Sec. 1 the term "sale at retail" is defined; when tangible personal property is sold for resale, such sale is not considered a sale at retail. The Act also contains certain definite specific, denominated and enumerated lines of business which do not sell tangible personal property but which render certain services, substances and things.

We are at a loss to understand why the Legislature saw fit to include meals and drinks in subsection (1) supra, as the selling of meals and drinks unquestionably constitutes sales of tangible personal property. It is not a service such as the furnishing of rooms in hotels, taverns "or other places in which rooms, meals or drinks are regularly served to the public."

You state that meals, drinks and rooms are served exclusively to the members--that the public generally may not participate or purchase meals, rooms or drinks from the club; therefore, it cannot be said that rooms, meals or drinks are regularly served to the public. It is therefore the opinion of this department that when rooms, meals and drinks are served exclusively to bona fide members of a private country club, such sales are not subject to the 1% tax.

In arriving at this conclusion we are not unmindful of the decision in the case of State ex inf. v. Missouri Athletic and St. Louis Clubs, 261 Mo. 576, wherein Judge Walker, in discussing the question of the Missouri Athletic and St. Louis Clubs being eligible to obtain an intoxicating liquor license, said:

> "In view of the statute (Sec. 7188, R.S. 1909) declaring that 'no person shall, directly or indirectly, sell intoxicating liquors in any quantity less than three gallons, either at retail or in the original package, without

> taking out a license as a dramshop-keeper,' it is unlawful for an incorporated social or athletic club, without first obtaining a license as a dramshop-keeper, to dispense liquors to its members at a price paid or to be paid, whether for profit or otherwise."

The section under consideration in that case was a general one which placed no qualifications on the seller of the intoxicating liquor, while in the instant case the rooms, meals and drinks in question must be regularly served to the public in order to be taxed. This, the private clubs are not doing, according to your statement--the rooms, meals and drinks are only served to the members of the club and not to the general public.

We proceed to the next question which arises in this connection, i.e., if the members do not pay the tax, who is the user or consumer liable for the tax? Under the terms of the Act a sale of services is not defined, and as heretofore stated, there is no exemption for a resale as is the case with tangible personal property. It must be conceded that if rental of rooms "not regularly served to the public" is not subject to the tax, then the item of rooms passes out of the question and the State does not derive any tax from any one for such rooms.

At first blush there appears to be a conflict in the terms of sub-section (a) of Sec. 2, which relates to the tax of 1% on the price paid or charged for a sale of tangible personal property, and subsection (l), which we have construed to be a special section relating solely to the taxing of sales or charges for meals and drinks furnished in any hotel, tavern, inn, restaurant, eating house, drug store, dining car, tourist camp, or other place in which rooms, meals or drinks are regularly served to the public, because subsection (a) is a general section, dealing with every sale of tangible personal property wherein the same is not made for resale, while as we have stated before, subsection (l) appears to deal definitely with the question of the items of meals and drinks when regularly served to the public by the public by the businesses mentioned in subsection (l), regardless of the fact that same may be independent of and take precedence over subsection (a).

We further conclude that when the meals and drinks are not served by the various lines of business enumerated in subsection (1), they are subject to subsection (a) because they are tangible personal property; in either event the tax is the same and is imposed in the same manner in both sections.

We are of the opinion that when a sale is made to the club of meals and drinks (not to the individual members of the club), said club is the user and consumer, and becomes liable as purchaser for the tax. The members of the club, we think, correspond to members of a family, household or private boarding house, and hence the meals (groceries) and drinks are subject to payment of the tax at the time of purchase by the club.

In arriving at this conclusion, we have assumed that the members or officials of the club conduct or have under their personal supervision the selling of rooms, meals and drinks. If the rooms, meals and drinks are sold in the name of the club but said selling is conducted as a business by a private individual who makes a profit from the sales to the members, then, in that event, sales of rooms, meals and drinks to the members would be taxable.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General