VILLAGES: Trustees may pass ordinances for the taxation
TAXATION: of dance halls and pin-ball machines, but have no authority to tax juke boxes.

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Hon. George N. Davis
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Sir:

This will acknowledge receipt of your recent request for an opinion which reads as follows:

> "Mr. Green, mayor of Gifford, a village, has asked me to find out for him if they have a right to tax pin-ball machines, juke boxes, and also dance halls.
>
> "They have an ordinance to that effect and wish to enforce it.
>
> "I do not find any specific authorization in the statutes in this regard."

It is well established that municipalities or political sub-divisions have only such power to levy taxes as may be derived from constitutional or legislative grants. As stated in City of West Plains v. Noland, 112 S.W. (2d) 79, l. c. 81:

> "The power of municipalities to levy taxes is derived from either a constitutional or legislative grant and in levying taxes cities are limited and restricted by these grants. Kansas City, Mo. v. J. I. Case Threshing Mach. Co. et al., 337 Mo. 913, 87 S.W. 2d 195; Kroger Grocery & Baking Co. v. City of St. Louis, Mo. Sup., 106 S.W. 2d 435, 111 A.L.R. 589; Siemens v. Shreeve, 317 Mo. 736, 296 S.W. 415."

Since Gifford is a village, we shall look to the statutory authority granted such villages for purpose of taxation. Section 7248, R. S. Missouri, 1939, is applicable to villages and provides that the Board of Trustees, which is the governing body of such village, shall have the power to pass ordinances to license, tax, regulate and prohibit certain games such as ball, tenpin alleys, billards and pool tables, or other tables upon which games are played for pay or amusement, and further provides for licensing and regulating dramshops, tippling houses, public shows, circuses, theatrical and other amusements. Such Section reads in part as follows:

> "Such board of trustees shall have power to pass by-laws and ordinances to prevent and remove nuisances;* * * * to provide for licensing and regulating and prohibiting dramshops and tippling houses, public shows, circuses, theatrical and other amusements, to the distance of one-half mile from the corporate limits of such town; * * * * to license, tax, regulate and prohibit ball and tenpin alleys, billards and pool tables, or other tables upon which games are played for pay or amusement; to license, tax, regulate and prohibit all other games for pay or amusement: Provided, that no permission shall be given to bet money, property or other thing upon any game, * * * * * * * *"

The words, "or other tables upon which games are played for pay or amusement", are broad enough to include pin-ball machines, and, likewise, the words, "dramshops and tippling houses, public shows, circuses, theatrical and other amusements", are also sufficient to include dance halls.

In People ex rel. Nelson v. Sherrard State Bank, 258 Ill. App. 168, it was held that where a number of items are ennumerated in an enactment and then supplemented with the term "and other articles, goods", etc., such term means other articles and goods of a class and kind as previously enumerated.

As stated by the Court in State ex rel. v. Gordon, 268 Mo. 321, l. c. 328, in construing the general words fol-

lowing specific words:

> "One contention is that the statute 'authorizes, as one proposition, "any county . . . to incur an indebtedness for the purpose of building a courthouse, jail, poorhouse, county sanitarium, or other county buildings;"' that the 'italicized words mean buildings like those specifically mentioned and, therefore, mean 'courthouses' and, as a consequence, authorize a submission including two courthouses. This argument is designed, it seems, to avoid the force, if any, of the statute's use of the term 'courthouse' in the singular. The canon of construction invoked cannot be so employed. Its effect is to restrict the meaning of the general words to things of a character like those particularized. It does not warrant a construction of the general words as mere repetition, in the plural number, of the things specified in the singular. General words, under that canon, do not explain or amplify particular terms preceding them, but are themselves restricted and explained by the particular terms. The contention made is not tenable."

It is our opinion that the well known doctrine of statutory construction, ejusdem generis, is applicable in this case. Thus, where general words follow specific words, the general words will be construed as applicable only to such classes or things as may be included by the particular or specific words. This rule is based upon the reason that if the General Assembly had intended the general words to be used in their unrestricted sense, they would have made no mention of the particular or specific words. See State v. Eckhardt, 232 Mo. 49, l. c. 52.

In Pearson v. City of Seattle, 44 Pac. 884 and 885, 14 Wash. 438, it was held that the word amusement was synonymous with diversion, entertainment, recreation, pastime and sport so that a public dance would be a public amusement within the meaning of a paragraph of an ordinance providing that

every person who shall conduct any concert, show or any other public amusement within the City of Seattle, without obtaining a license therefor, would be guilty of a misdemeanor. In so holding the Court said:

> "* * * And section 2 reads: '* * * * That every person who, as proprietor, licensee, manager or agent, shall hereafter conduct, manage or superintend any circus, side-show, skating rink, opera, concert, show, exhibition, or other public amusement of any kind within the city of Seattle, without first having obtained a license therefor, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine in any sum not exceeding one hundred dollars ($100), or by imprisonment in the city jail not exceeding thirty days, or by both such fine and imprisonment.* * * ' It is admitted by defendant's answer that the respondent conducted a dance in a place 'adjoining to' and 'connected with' his saloon, where intoxicating liquors were sold and disposed of, and where women solicited, for a salary, the sale of intoxicating liquors. This dance was therefore conducted in such a place and in such a manner as to require the payment of a license fee of $1,000 per year, provided it was a public amusement. The license delivered to respondent did not specify the kind of amusement and the particular place licensed, as required by section 4 of the ordinance, but simply authorized the respondent to 'run a place of amusement' from February 4, 1893 to February 4, 1894. But it appears that respondent procured it for the purpose of conducting a dance, which he did conduct in the city, and for aught that appears in the record, with the knowledge of its officers, uninterruptedly, for a period of more than 11 months. Under these circumstances, we think the city, after receiving and retaining respondent's money, cannot consistently urge that the license was invalid by reason of informality, or even

> that it did not authorize the carrying on of the business in which respondent was engaged, and that, therefore, the license fee was voluntarily paid and cannot be reclaimed.
>
> "But we are unable to see that the court erred in its conclusion that a public dance, conducted as this was by the respondent, was a public amusement, within the meaning of Ordinance No. 1790. Such was apparently the view of the city officials; for otherwise there would have been no necessity for passing Ordinance No. 3152, declaring such dances a nuisance. By the terms of Ordinance No. 1790 a skating rink is a public amusement, and it would seem that a public dance might be included in the same category without violating the rule of construction contended for by appellant, --that no amusements can be included within the terms 'other public amusement' but such as are of the same general character as those specified. Moreover, Webster says that the word 'amusement' is synonymous with 'diversion,' 'entertainment,' 'recreation,' 'pastime,' 'sport,' and if that be true a public dance is a public amusement."

In view of this definition of amusement, there is no question but that a dance hall may be taxed under Section 7248, supra. However, we find no statutory authority broad enough to permit such a village to tax juke boxes. There is no doubt but that under the Police Power a village may regulate the use of juke boxes. However, this will not permit a tax on same in the absence of some statutory or constitutional grant.

CONCLUSION

Therefore, it is the opinion of this department that under Section 7348, supra, the Board of Trustees of the Village of Gifford may pass ordinances for the purpose of taxing pin-ball machines and dance halls but have no authority to tax juke boxes.

Respectfully submitted,

APPROVED:

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