

TAXATION:  
ST. LOUIS CITY CHARTER:

Charter of the City of St. Louis may be amended so as to authorize the levy of a city earnings tax on income earned by residents and income earned by nonresidents employed in such city, and statute is unnecessary.



July 9, 1953

Honorable Edward W. Garnholz  
101 S. Meramec Avenue  
Clayton 5, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department reading as follows:

"If the charter of the City of St. Louis were amended by vote of the people of St. Louis so as to specifically authorize the levy of a city earnings tax on all income earned by residents and nonresidents employed in that city, would it then be necessary for the Missouri Legislature to pass enabling legislation further authorizing the City of St. Louis to levy the city earnings tax, or would the specific amendment to the charter in itself be sufficient?"

Section 1 of Article X of the Constitution of Missouri provides as follows:

"Taxing power--exercise by state and local governments.--The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes."

The question is then whether or not the provisions of Section 1 of Article X of the Constitution, supra, would prohibit the imposition of a city earnings tax by the City of St. Louis if the charter of such city were amended so as to authorize the imposition of such a tax. We believe that

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the provisions of Section 1 of Article X of the Constitution do not prohibit the imposition of an earnings tax by St. Louis if the charter were amended so as to authorize the imposition of such a tax. In the case of *Kansas City v. Frogge*, 176 S.W. (2d) 498, the Supreme Court discussed the effect of the adoption of a city charter in the following language, l.c. 501:

"The General Assembly may impose taxes upon municipal corporations or upon the inhabitants thereof for other than strictly municipal purposes. Section 1, Article X, Constitution of Missouri; *State ex rel. Faxon v. Owsley*, 122 Mo. 68, 26 S.W. 659. The General Assembly may not impose taxes upon municipal corporations or upon the inhabitants thereof for municipal purposes but may, by general laws, vest in the corporate authorities the power to assess and collect taxes for municipal purposes. Section 10, Article X, Constitution of Missouri.

"'A charter framed by a city for itself under direct constitutional grants of power so to do has, within the limits therein contemplated, the force and effect of one granted by an act of the Legislature when unrestrained by constitutional provision.' (Our italics.) *Ex parte Siemens v. Shreeve*, supra (317 Mo. 736, 296 S.W. 416). See also *State ex rel. Carpenter v. St. Louis*, supra; and *Morrow v. Kansas City*, 186 Mo. 675, 85 S.W. 572.

"By the grant to plaintiff city of the right to frame and adopt a charter, the people of the state transferred or granted part of the legislative power of the state (subject to constitutional limitation in the grant, Section 16, Article IX) to the people of plaintiff city. The power so granted to the people of plaintiff city was the legislative power to frame and adopt a charter for its own government. *Morrow v. Kansas City*, supra. The people of a city which has been granted the

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right by the people of the state to frame and adopt a charter may not deem it desirable or needful to delegate under the charter of their city all of those powers which may be delegated by the legislature to cities organized under general law. So the powers which plaintiff city may exercise, through the constitutional grant of the right to frame and adopt a charter, are those powers which the people of the city delegate to it under its charter, if unrestrained by constitutional limitation.

"The plaintiff city's power to impose taxes is, therefore, not the power to impose any tax, except as 'limited by the power reserved in its charter' and uncontrolled by general law; but is the power to impose those taxes which has been delegated by the General Assembly under statute or by its people under its charter, if unrestrained by constitutional limitation."

In the Frogge case, supra, the Supreme Court held invalid an ordinance of Kansas City imposing a compensating use tax because the Court held that there was no authorization in the charter of such city for the imposition of such a tax, and there was no general statute enacted by the General Assembly authorizing Kansas City to impose such a tax.

In the case of Kansas City v. Threshing Machine Company, 87 S.W. (2d) 195, the Supreme Court held that an occupation tax, based upon the amount of space occupied by the business to be taxed, was invalid because the ordinance contravened a state statute. However, the Court indicated that if such a tax had been authorized by the city charter, and no statute had been in existence contrary to such provision, an ordinance authorizing such a tax would have been valid. The Court said at l.c. 206:

" \* \* \* However, the present charter of Kansas City was adopted in 1925, when Kansas City was a city of more than 300,000 inhabitants (324,410, census of 1920). It, therefore, could only adopt in that charter the method for taxing the occupation of merchants and manufacturers which the Legislature had provided and any provisions of its new charter are void if they conflict with the statute. \* \* \*"

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We believe it to be clear under the holding of such case that the provisions of a charter are subordinate to the provisions of the State Constitution, and the state statutes only.

There is no statute prohibiting the imposition of an earnings tax by the City of St. Louis.

The case of Carter Carburetor Corporation v. City of St. Louis 203 S.W. (2d) 438, was the case which held that Ordinance No. 43783 of the City of St. Louis which imposed an earnings tax was invalid. At the time such case was decided there was no state statute authorizing the imposition by the city of such a tax, and the Court held that there was no provision in the city charter authorizing the imposition of such a tax by the city. The Supreme Court in that case did not specifically decide whether or not an ordinance imposing an earnings tax upon the residents of St. Louis and upon nonresidents employed in St. Louis would be valid if the city charter were amended so as to authorize the imposition of such a tax. In discussing the Frogge case cited and quoted, supra, the Court said, l.c. 441:

"As we read the Frogge opinion it held the following. It started with the thesis that the power to tax is an extraordinary one, which does not inhere in municipal corporations, and will not be implied unless the implication be necessary and the grant unmistakable. Thence it reasoned as follows. A constitutional grant of power to a city to frame and adopt a special charter, is a grant to the people of that city. But the city's people may not deem it desirable to delegate to the city in its charter all of the powers they could have granted under the constitutional sanction. Therefore, the City's power to impose taxes is not the uncontrolled power to impose any tax except as limited by its charter, or general law. On the contrary, it is only the power to impose such taxes as have been authorized by the General Assembly in a general law, or by the people in its charter--if not in conflict with the Constitution. Then the opinion went on to hold that neither any general statute nor any of the detailed provisions of the charter authorized Kansas City to impose the compensating use tax provided for in the ordinance; and that the power could not be implied.

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"Following that the decision discussed the ordinance and tax from the viewpoint of the City's general police power under its charter, but held it would be better not to decide that question--except in its relation to the State Sales Tax Act. Mo. R.S.A. Sec. 11407. As to that, the opinion held the condition sought to be remedied was not one of purely local or municipal concern, but was a matter of State concern; and that the legislature had not attempted to deal with it in the Sales Tax Act, nor had it delegated that power to the City. Thence the conclusion was reached that the ordinance was void.

"In a per curiam on motion for rehearing, at the end of the opinion, the decision held that art. 1, sec. 1, Par. 2 of the Kansas City charter broadly authorizing the City to 'classify the subject and objects of taxation' did not furnish a basis for the tax; and that art. 1, Sec. 3 of the charter, providing the enumeration of particular powers should not be construed as limiting or impairing any grant of general powers therein, could not be treated as authorizing the City to impose the tax, since it was nowhere sanctioned by charter or statute, and the rule of strict construction applied to the power of taxation."

Discussing the question of whether or not there was authorization in the general statutes or the charter for the imposition of an earnings tax, the Court said, l.c. 443:

"Now as to the instant case, there admittedly is no specific authorization in the statutes or the St. Louis charter for an 'earning' tax. And the General Assembly has more than once forbade all cities to impose certain kinds of taxes. Sec. 11454, R.S. 1939, Mo. R.S.A., does that with respect to sales taxes--which would impinge on our State sales tax. And Sec. 7440, R.S. 1939, Mo. R.S.A. since 1889 has further required a specification by statute, or in the charters of all cities, of the vocations

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subjected to license taxes. The General Assembly has never authorized municipalities to impose an income tax--which would diminish pro tanto the State's revenue from the State income tax--and no city has ever tried to do it so far as appears.  
\* \* \*

Finally in discussing the question of the authority of the City of St. Louis to authorize the imposition of such a tax by so providing in its charter, the Court said, l.c.

444:

"But it is not true. As earlier stated in the Carpenter case in italics 318 Mo. loc. cit. 892, 2 S.W. 2d loc. cit. 719, 'There are many matters local to the city, requiring governmental regulation, which are foreign to the scope of municipal government.' The impact of the 'earnings' tax contemplated by the ordinance under adjudication here would fall on non-residents of the City who might be residents of any and every county and city of the State--and other States. And if there be now or hereafter other cities in the State with charters containing a provision as broad as Sec. 1, Art. 1, Par. 1 of the St. Louis charter, they could retaliate with a corresponding ordinance which would equally bind citizens of St. Louis and all other like cities. Certain such ordinances would not be matters of purely local concern, from the viewpoint of the State government.

"It is true that as regards the police regulations of a city, all who go there must obey them. So too, perhaps, of some excise taxes, especially if they are pseudo-regulatory and therefore partake of the police power. One who buys gasoline in St. Louis must pay the tax thereon, and one who purchases cigarettes must pay the stamp tax. But in general such taxes are imposed only on citizens or residents of the jurisdiction. That is true of our State income tax, Sec. 11343, R.S. 1939, Mo. R.S.A. And the tax considered in the

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Frogge case, supra, was imposed on the use of property in the City, and was evidently aimed at residents. The same was true of the tax on the storage of gasoline in the People's Motorbus case, supra. But in the instant case a pure revenue tax is imposed on non-residents who perform work or services within the City. We are not holding the ordinance that far invalid, but are ruling merely that it is not authorized by the abstract provisions of art. 1, Sec. 1, Par. 1 of the charter." (Last emphasis ours.)

It is to be noted that the Court in the underlined portion of the last quotation did not rule on the question of whether or not an earnings tax would be valid if authorized by a city charter, but we believe that the implication in such holding is that the power to authorize the imposition of such an earnings tax may be delegated to the city by the people thereof in amending the city charter.

We are not unmindful of the holding of the Supreme Court in the case of Walters and Williams vs. City of St. Louis et al, No. 43648, decided by the Supreme Court en banc, April Session, 1953, which opinion upheld the validity of ordinance No. 46222, which was the ordinance imposing an earnings tax as authorized by Laws of Missouri 1951, page 334, which opinion has not yet been reported. The court said in that opinion:

"Respondent's contention fails, however, to take into consideration the provisions of Article X, Sec. 11(f), of the Constitution, which is as follows: 'Nothing in this constitution shall prevent the enactment of any general law permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes.' (Emphasis ours.) By the clear implication of that provision, legislative permission to any city or other political subdivision to enact an earnings tax ordinance can only be granted by a general law. We can attach no other meaning to it. Of course, this does not mean that a general law permitting the levy of such a tax would be local or special because it was operative only in the City of St. Louis, provided it was prospective in its terms so

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as to become operative in other cities as they come within the classification therein specified. State ex rel. Zoological Board of Control v. City of St. Louis, 318 Mo. 910, 1 S.W. 2d 1021, 1027; State ex rel. Carpenter v. City of St. Louis, 318 Mo. 870, 2 S.W. 2d 713, 718."

We believe that the holding above quoted means only that where an earnings tax is authorized by a statute, such statute must be a general law and cannot be a special law. It is to be noted that the court was answering in the quoted portion the contention that the statute authorizing the imposition of an earnings tax by the City of St. Louis was unconstitutional because it was a special law. We do not believe that the court in this case intended to hold that an earnings tax could be imposed only if it was authorized by a statute enacted by the general assembly.

#### CONCLUSION.

It is the opinion of this office that if the charter of the City of St. Louis were amended so as to authorize the levy of a city earnings tax on income earned by residents of St. Louis, and nonresidents employed in St. Louis, that it would be unnecessary for the Legislature to pass a statute authorizing the City of St. Louis to levy such a tax.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. C. B. Burns, Jr.

Very truly yours,

JOHN M. DALTON  
Attorney General

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