MOTOR VEHICLE FUEL TAX: Liability of political subdivisions of the State for payment of motor vehicle fuel tax, under the Constitution of 1945.

June 6, 1945

FILED 61

Mr. George Metzger
State Inspector of Oils
Jefferson City, Missouri

Dear Sir:

In a letter dated May 5, 1945 you requested an opinion of this department, which letter reads as follows:

> "We have received letter dated May 4, 1945, from Roy Jablonsky, Surveyor and Highway Engineer of St. Louis County, which reads as follows:
>
> "'The Law Department of St. Louis County has given this office an opinion to the effect that counties, under the provisions of the new Constitution, are exempt from the payment of motor vehicle fuel tax. Accordingly, the opinion further suggests that we discontinue payment of such tax to the State of Missouri.
>
> "'In view of the foregoing, no check will be mailed to your office for gasoline purchases consumated after May 1st, 1945.' (Signed) Roy Jablonsky.
>
> "There has been introduced in the Senate Bills Nos. 123 and 124, which if passed would amend the present Motor Fuel Tax Law to exempt the State of Missouri or political subdivisions thereof, or any municipality of the State of Missouri, from payment of tax.
>
> "We would appreciate receiving your written opinion on this subject at the earliest date possible."

Liability for the payment of motor vehicle fuel tax is

presently imposed by the provisions of Section 3 of an act found in Laws of Mo. 1943, pages 670-699, which reads, in part, as follows:

> "(a) In order to provide funds for the construction and maintenance of the public highways of this state and to pay the principal and interest on the road bonds of the State there is hereby provided for a license tax to produce a sum equal to two cents (2¢) on each gallon of motor fuel used in propelling motor vehicles upon the public highways of Missouri to be collected as hereinafter provided.
>
> "(b) For the privilege of receiving motor fuel to be sold for use in propelling motor vehicles upon the public highways of this state, there is hereby imposed upon every person receiving fuel in this state, a license tax equal to two cents (2¢) per gallon on all motor fuel received to be sold for use in propelling motor vehicles upon the public highways of this state. It shall be presumed that all motor fuel received in this state is to be sold for use and will be used in propelling motor vehicles upon the public highways.
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> * * *
>
> "(e) Every person purchasing motor fuel in this state from any distributor or other person, shall pay, except as otherwise provided herein, to the distributor or other person from whom said fuel is purchased, the amount of the license tax which the distributor or other person is required by this act to add to the selling price of the motor fuel. It shall be presumed that all fuel purchased by any person in this state is intended to be used and will be used to propel motor vehicles upon the public highways of this state."

The term "person" is further defined by subsection (d) of Section 2 of the act, reading as follows:

> "'Person' shall mean and include natural persons, partnerships, firms, associations and corporations, any representative appointed by any court, the state, its

departments and political subdivisions, the United States and any department, agency or instrumentality thereof, in so far as the Constitution and Laws of the United States do not prohibit the taxation thereof by the State of Missouri, and the use of the singular number shall include the plural number. 'Political subdivisions of the state' as used herein is intended to be all inclusive and shall include any county, township, road district, sewer district, school district, municipality, town or village, or any other public corporation, whether of like character as those heretofore enumerated or not, that is an agency for the administration of civil government."

The exemptions from payment of the tax are set out in Section 3, as follows:

"(f) No tax shall be imposed, charged or collected with respect to the following: (1) Motor fuel exported or sold for export from this state to any other state, territory, or foreign country, except in the usual and ordinary fuel supply tank connected with the engine of a motor vehicle leaving this state.

"(2) Motor fuel sold to the United States of America or any agency or instrumentality thereof.

"(3) Motor fuel sold to any post exchange or concessionaire on any Federal reservation within this state; but the tax on motor fuel so sold, to the extent permitted by Federal Law, shall be paid to the state by such post exchange or concessionaire.

"(4) Motor fuel sold to any person for use in the performance of any such person's cost-plus-a-fixed-fee or fixed percentage contract with the United States, or cost-plus-a-fixed-fee or fixed percentage contract under such contract, for the construction, manufacture or operation of the United States Government defense projects connected with the prosecution of any war declared by Congress.

"(5) Motor fuel used by any licensed distributor for any purposes other than the generation of power for the propulsion of motor vehicles upon the public highways.

"(6) Motor fuel received by any licensed distributor and thereafter lost or destroyed while such distributor is the owner thereof as a result of theft, leakage, fire, accident, explosion, lightning, flood, storm, act of war, or public enemy, or other like cause.

"(7) Sales or exchanges of motor fuels between licensed distributors, as provided in the second sentence of Section 3(g)."

It is therefrom apparent that no exemption exists in the Act relieving the County of St. Louis from the payment of the motor vehicle fuel tax.

We note from your letter of inquiry that the County is apparently refusing to pay the motor vehicle fuel tax for the reason that it is thought that they are exempt under certain provisions of the Constitution of 1945. We have examined the Constitution of 1945 and presume that Article III, Section 39, subsection (10) is the part thereof referred to in the opinion rendered by the Law Department of St. Louis County and mentioned in your letter. Said section reads as follows:

"The general assembly shall not have power:

* * * *

"(10) to impose a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision."

As we read your letter, two questions are presented:

(1) Is the county of St. Louis liable for payment of the gasoline tax up to July 1, 1946, which is the date provided in the Schedule of the new Constitution for the expiration of the effectiveness of all laws now in force unless these laws are sooner repealed?

(2) Is the county or any other political subdivision liable for the payment of the gasoline tax after July 1, 1946, if the present law is then still in force?

It is our opinion that the first question must be answered in the affirmative for two reasons. First, the Supreme Court of Missouri in the case of Trustees of William Jewell College in Liberty, Missouri vs. Beavers, 171 S. W. (2d) 604, ruled that a similar Constitutional prohibition against granting tax exemption in the Constitution of 1875 were prospective in nature and that the general affirmative provisions do not have the retroactive effect of repealing exemptions vested prior to the adoption of the Constitution. Under this decision the provisions of Article III, Section 39, subsection (10), were clearly prospective in nature only and can relate only to statutory enactments subsequent to the effective date of the Constitution of 1945. Second, we are of the opinion that Section 2 of the Schedule appended to the Constitution of 1945 is applicable, and we quote therefrom:

> "* * *All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Thus the above quoted provision of Section 2 of the Schedule has the effect of keeping in full force and effect the statutory enactments found in Laws of 1943, pages 670-699, until July 1, 1946, even if they are inconsistent with other Constitutional provisions, unless such enactments are sooner repealed or amended by action of the General Assembly.

Therefore, it is our opinion that the County of St. Louis will be liable under the Motor Vehicle Fuel Tax Act, Laws of 1943, pages 670-699, until July 1, 1946, unless such law is sooner repealed or amended.

The second question involves the determination of whether the 1943 Motor Fuel Tax Act provides for a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or any political subdivision. This question is reduced to one of whether or not the Motor Vehicle Fuel Tax Act is a use or a sales tax upon property of a political subdivision. It will be seen from the wording of the

Constitutional provision herein involved that the Constitution prohibits a use or sales tax on property. Thus the word "use" cannot be taken in its broad sense and if the motor fuel tax is a tax for the use of the public highways, as distinguished from the use of specific personal or real property, the tax does not fall within the prohibition of the Constitutional provision.

It is apparent also that if the tax is not a use or sales tax of any kind, or if it is a use or sales tax on property other than that of a political subdivision, it also does not fall within the prohibition of the Constitutional provision. The questions just mentioned will both be considered in part 2 of this opinion with regard to decisions of jurisdictions other than Missouri.

Since the Missouri law would be controlling on a question of this type it will be well to examine the available law on the subject in this state.

Part I

There have been no interpretations by the Missouri courts of the sections of the 1943 Motor Vehicle Fuel Tax Act which are pertinent to the questions here involved.

Article 2 of Chapter 45, R. S. Mo., 1939, provides for a Missouri Motor Vehicle Fuel Tax Act which is similar in many respects to the 1943 Act. Although the wording of the former tax law is somewhat different, a decision of a Missouri court under that law, on the exact question presented here, would be helpful in determining the character of the tax herein involved.

The only case we find in which there is any reference, by implication or otherwise, to the character or nature of the former Act is State vs. Banks, (1940 Mo.), 145 S. W. (2d) 362. In that case the defendant purchased gasoline within the State of Missouri from another distributor. The latter failed to pay the tax amount into the treasury of the state. The statute provided that every distributor was liable for payment of the tax and provided for a refund to any purchaser who had paid the tax twice. The state sued to collect the gasoline

tax on the gasoline sold by the defendant, claiming that the defendant was primarily liable, although it could be reimbursed under the provisions for refund. In disposing of this case the court said:

> "It is apparent, from reading the provisions of these sections together, as they now stand, that the intention of the Legislature was to require the payment of two cents on each and every gallon of gasoline sold or used in this state to operate motor vehicles over the roads, streets or highways of this state. The tax was laid, as a license tax, against distributors and dealers only. Central Transfer Co. v. Commercial Oil Co., D. C., 45 F. (2d) 400. Undoubtedly, the statute last above set out Section 7814, was intended both to authorize distributors and dealers to pass the tax on to consumers and, with the sections 7809-7813, preceding it to prevent bootlegging of gasoline for use in this state, without buying it from licensed distributors or dealers herein to evade the tax. (These provisions were added by the Legislature of 1925, Laws 1925, p. 255, to strengthen the original laws adopted by the people in 1924. Clearly, also, the intention shown by all of these laws was to collect the tax but once on each gallon of motor vehicle fuel sold or used, and this is made plain by the provisions for refund. * * *"

It is our opinion that the above statement is not too persuasive in the matter of the exact nature of the tax involved. The discussion was incidental to the main question involved and the court, though stating that the tax was laid as a license tax, also stated that the Legislature intended to tax every gallon of gasoline sold or used in this state to operate motor vehicles over its highways. Thus, it appears that the statement as to how the tax was laid was merely a statement as to the terms of the statute and not a determination of the nature of the tax.

We find two other Missouri cases which deal with the nature of any type of gasoline tax, Viquesney vs. K.C. (1924 Mo.), 266

S. W. 700; Jennings vs. St. Louis (1932 Mo.), 58 S. W. (2d) 975. These were cases involving city ordinances which were different in wording than the Missouri Motor Vehicle Fuel Tax Act. The ordinance involved in these cases specifically provided that the tax was an occupational tax or a direct privilege tax for the right of engaging in business, and there was no provision in them that the tax was to be confined to those using gasoline on the streets of the city, so that they could not be construed as taxes for compensation for the privilege of using the streets.

We are of the opinion that the difference between the city ordinances of these cases and the present State Motor Vehicle Fuel Tax Act and, in the case of State vs. Banks, supra, the lack of a direct holding on the point herein involved, plus the fact that in the latter case the opinion of the court cannot be construed as definitely determining the nature of the tax, makes it difficult to consider these cases controlling in the matter before us.

We, therefore, have gone to other jurisdictions for enlightenment as to the nature of the tax.

Part 2

The Federal Courts will follow the State's interpretations of their own statutes.

McCarroll vs. Dixie Lines, 309 U.S. 176;
John D. Bingaman vs. The Golden Eagle Lines, 297 U.S. 626;
The Texas Co. vs. Blue Way Lines, 93 Fed. (2d) 594;
Kansas City vs. Monger, 70 Fed. (2d) 361.
The Dixie Line vs. McCarroll, 23 Fed. Supp. 987.

The overwhelming majority of the state cases can be divided into two categories.

(1) Those which hold such a tax a compensation tax for the privilege of using the public highways.

(2) Those which hold that a tax similar in most respects to our Motor Fuel Tax is a license tax on the distributor measured by the sales of gasoline.

At least eight states are represented by the cases falling under the first of these classes. They are: Minnesota, Utah, South Dakota, Arkansas, Illinois, New Hampshire, Alabama and Texas. The statutes of these states have been found to be very similar in their provisions to the present Missouri law. The statutes of Minnesota, New Hampshire, South Dakota and Arkansas contain substantially the same provisions that the Missouri law now carries. That of Texas is very similar.

In Hallett Construction Co. vs. Spaeth (1942 Minn.) 4 N.W. (2d) 337, the Supreme Court of Minnesota held that the Motor Fuel Tax was a privilege tax as compensation for the use of the highways. The court there said, l.c. 338:

> "It is quite obvious from the tenor of the amendment to Minn. Const. art. 9, sec. 5, that the people of the state were thereby authorizing a tax on gasoline used in motor vehicles which were in turn used on the public highways of the state, and that they were not attempting to authorize a general sales tax on gasoline. * * * Since the tax is imposed on the theory that it is compensation to the state for the use of its highways, the reason for exempting machinery used to improve or construct highways from a tax levied on vehicles which wear out the highways is apparent and logical. * * *"

In Sparling vs. The Refunding Board (1934 Ark.), 71 S. W. (2d) 182, the Supreme Court of Arkansas said, l.c. 186:

> "Let it be definitely understood that the tax imposed is not a property tax, but is a privilege tax for the use of the highways* * *."

The Arkansas statute applied the tax in substantially the same manner as the Missouri law does, that it taxed all gasoline sold and used in the state, which was to be used on the highways of the state and provided that the distributor

should pay the tax. The Arkansas Court said:

> "* * *The Legislature has declared the public policy of the state to be to tax all gasoline sold or used in this state for such purpose in order to prevent fraud and imposition on the state in the sale or use of a comparatively negligible quantity for other purposes."

They thus indicated that the provision for taxing the gasoline at the source was merely a safeguard against fraud perpetrated on the state by the failure to pay the tax on the part of consumers whose use of gasoline could not be readily traced. The provision for refund for non-highway use in the Arkansas statute was said to indicate the same thing.

The Sparling case was followed in the Federal Courts in the following:

> Dixie Greyhound Lines vs. McCarroll, 101 Fed. (2d) 572;
> McCarroll vs. Dixie Lines, 309 U.S. 176;
> Dixie Lines vs. McCarroll, 22 Fed. Supp., 985;

In 101 Fed. (2d) 572, the Federal Circuit Court held that a tax under such theory must bear a reasonable relation to the use made of the highways. In the case of In re Opinion of the Justices (N.H. 1937), 190 A., 805, the New Hampshire Supreme Court held their fuel tax on gasoline was for the privilege of using highways and not a sales tax. This case was cited with approval. Tirrell vs. Johnston, (1934 N.H.), 171 A., 641, (aff. 293 U.S. 533) l.c. 644, held:

> "* * *The provision that the toll is collected only on account of gasoline used 'for the propulsion of motor vehicles upon highways' (Publ. Laws c. 104, Sec. 7) is of consequence, as showing the nature of the charge."
>
> "* * *If the sale is for other uses the charge is not made. (Publ. Laws, c. 104, Sec. 7.) The sale enters into the computation only as a measure of the amount consumed upon the highways.* * *"

In Carter vs. State Tax Commission (1939 Utah), 96 Pac.

(2d) 727, l.c. 731, the court cited an Oregon case holding that the object of the law was to fix a fee as compensation for using the roads and said:

> "* * *The same principle is applicable to our own law, the compensation arising in the collection of fees for the state highway fund. * * *"

In State vs. City of Sioux Falls (S.D. 1932), 244 N.W. 365, the court said:

> "* * *Construing the various provisions together, including the refund provisions it appears that the tax in question is, in substance, a charge imposed by the state for the privilege of operating motor vehicles upon the public highways of this state.* * *"

The court indicated that the quantity of motor fuel used was the yardstick adopted to measure the extent of the use of the highways. This is the usual theory of the cases under this class and under such theory the requirements of the U.S. Circuit Court in Dixie Greyhound Lines vs. McCarroll, supra, are met. The same result reached by the above cases was reached by the following cases:

> Winter vs. Barrett (1933 Ill.), 186 N.E. 123;
> Texas Company vs. Blue Way Lines (1937 Tex.), 93 Fed. (2d) 594;
> State Tax Commission vs. County Board of Education (1938 Ala.), 179 S. 199;
> State vs. El Paso (1940 Tex. Civ. App.), 143 S.W. (2d) 366.

The Supreme Court case of Inter-city Transit vs. Lindsay (1930), 283 U. S. 189, is helpful in determining the elements of a tax which is levied under the theory of compensation for use of the highways. The Supreme Court of the United States had before it the argument that the tax was a privilege tax

for the use of the highways. The court held the tax in question was not such a tax because the statute did not provide for the money to go into the highway fund and made a point of this fact. The court said a tax on the privilege of using the highways would have to carry the following elements:

1. The nature of the impositions must be such as to indicate a reasonable relation to highway use, such as a mileage tax proportinate to the use of the highways.

2. The statute should allocate the proceeds to highway purposes or to the general expenses of the State Highway Department. These provisions are carried in the Missouri Motor Fuel Tax Law.

Under the theory of this class of cases the Motor Fuel Tax Act does not provide for a tax such as would fall under the prohibition of Section 39, subsection (10) of Article III of the new Constitution, because the tax would not be a tax on the use of property.

Under the second class of cases, which hold that such a tax is a license tax on the distributor, we find a totally different theory of the tax.

This theory is that the tax is a "license" or"privilege" tax on the distributor for the privilege of selling or using gasoline. It is well to mention here that the fact that it is a license tax(relating to property)would not necessarily mean that it could not also be a use or sales tax. However, under the theory of these cases, the tax being on the distributor, the tax would not be a use or sales tax on the county of St. Louis since the privilege of user or sale which is taxed is not that by the consumer but by the distributor. The cases falling under the second class of cases are as follows:

Inter-state Transit Company vs. Lindsay, supra;
American Airways vs. Wallace, (1932), 57 Fed. (2d) 877;
U.S. vs. Lee (1943 Fla.), 13 So. (2d) 919;
Department of Highways vs. Baker (1940 N.D.), 290 N.W. 257;
State vs. Standard Oil Co. (1938 La.), 182 S. 531;

State vs. Hamilton (1940 Tenn.), 144 S. W. (2d) 749;
City of Portland vs. Kozer (1923 Ore.), 217 Pac. 833;

An examination of the above cases reveals that the statutes of most of the states which have ruled that the gasoline tax falls under the second class did not carry provisions which indicated that the tax was to be placed only upon gasoline to be sold for use or used in motor vehicles operating only on the highways of the state.

It is apparent that this class of cases go on the theory that the provision in the statute that the tax shall be passed on to the purchaser of the gasoline and added to the sale price thereof, or that this is the practical effect of the tax, does not change the character of the tax from a tax on the distributor to one on the consumer. The correctness of this theory is strengthened by the case of Alabama vs. King and Boozer (1941), 314 U. S. 1 ., in which the Supreme Court of the United States held that a general sales tax on a dealer or wholesaler is a tax on him and the fact that it was ultimately paid by the consumer (the U. S. Government) did not make it a tax on the Federal Government. In that case the defendant had sold materials to the United States Government under a cost-plus-fixed-fee basis and the contention was that this was a tax on the government since it actually paid it. The Supreme Court ruled against this contention. The King and Boozer case might be distinguished in that it may be argued that the Supreme Court decided it on the basis of the fact that the contractor was not an instrumentality of the government. Thus, the case would not be a holding that the fact a tax is passed on to the consumer does not affect the nature of a tax. However, in U. S. vs. Lee, supra, (1943) the Florida Supreme Court applied this rule to a Motor Fuel Tax Act, and held that the tax was on the distributor. Should the Missouri Supreme Court follow the above rule, and not distinguish the King and Boozer case on the basis mentioned above, it would rule out the possibility of the present Fuel Tax Act being a tax on the consumer in any way including one for the privilege of using the highways.

We are of the opinion that the theory that this second class of cases prevents the avoidance of the tax by St. Louis County, where the County purchases from a distributor, just as surely as

does the theory of the first class of cases. We think this second class of cases excludes the possibility of the County of St. Louis being exempt from the Motor Vehicle Fuel Tax under the provisions of Article III, Section 39, subsection (10), since this theory places the tax upon the distributor or "first source" and not upon the consumer.

We have heretofore been considering the second class of cases with relation to the situation wherein the county of St. Louis buys gasoline from a distributor. There remains to be considered the situation in the event that the county of St. Louis buys the gasoline directly from a refinery in this state. If the tax was placed upon the privilege of selling or using gasoline, it might well be argued that, under the theory of this second class of cases, the tax was a sales or use tax. This might be reasonable because, since a privilege tax might also be considered a sales or use tax, a tax which was levied against the privilege of selling or using might be considered a sales or use tax. The present Missouri law does not so levy the tax. The Missouri law taxes the privilege of receiving, and not of selling or using. The cases falling under this second class indicate that the privilege which the statute of the state, by its wording, taxes, is the privilege which determines the nature of the tax. The statutes involved in these cases, though varying in their wording, taxed the privilege of selling or using and therefore, the tax could be considered a sales or use tax on the distributor. Such is not true in the case of the Missouri Motor Vehicle Fuel Tax of 1943.

We are, therefore of the opinion that the county of St. Louis is not relieved of liability for payment of the gasoline tax in the event that it receives the gasoline directly from the refinery in this state, even under the theory of this second class of cases.

The few cases which indicate that a Motor Fuel Tax is a tax on the consumer for the privilege of using property, i.e. the gasoline, involve statutes which, we think are distinguishable from the 1943 Missouri Motor Fuel Tax Act. In Texas Co. vs. Siefried (1944 Wyo.), 147 Pac. (2d) 837, the Wyoming statute

taxed all gasoline and not merely that used on the public highways of the state.

In Bingaman vs. Golden Eagle Lines, supra, the court followed the New Mexico Supreme Court decision of Geo. A. Breese Lumber Co. vs. Mirable, 297 Pac. 699; 84 A.L.R. 830, which reflected the theory that the tax was not a tax for the privilege of using the highways. The New Mexico statute taxed all use of gasoline in New Mexico and the New Mexico court expressly pointed out that the statute nowhere said it was on the use of gasoline used on the highways. This, of course, indicated that a statute providing the latter would receive an entirely different construction.

Since Missouri has held that the distinction between a license and a tax depends on the purpose of the enactment (Wilhoitt vs. City of Springfield (1943 Mo. App.), 171 S. W. (2d) 95; State vs. Broeker (1928 Mo.) 11 S. W. (2d) 81, we may assume that the nature of any tax would be thus determined. If this is true it would seem that the court might well construe this tax to be for the privilege of using the highways, since the provisions of the act set out that it is for the purpose of raising a fund for road and highway department purposes and the tax is not placed on any gasoline not to be used over the state highways. A thorough examination of the cases persuades us that this result is consistently reached where the statute carries such provisions.

We are of the opinion that an additional reason for saying that Article III, Section 39, subsection (10) is not applicable to the instant situation is that reached by a consideration of another provision of the 1945 Constitution. This provision, we think, indicates a definite intention on the part of the Constitutional Convention, which is contra to a finding that the Motor Vehicle Fuel Tax falls within the provisions of Article III, Section 39, subsection (10). All the provisions of a Constitutional or statutory enactment must be considered together and resolved in an harmonious fashion.

State vs. Harris, 337 Mo. 1052; 87 S. W. (2d) 1026.
Hull vs. Baumann, 345 Mo. 159; 131 S. W. (2d) 721.

It is our opinion that Section 39, subsection (10) of Art. III should be considered in the light of Section 30, of Article IV of the new Constitution, which reads as follows:

> "For the purpose of constructing and maintaining an adequate system of connected state highways all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes) less the cost, (1) of collection thereof, (2) of maintaining the commission, (3) of maintaining the highway department, (4) of any workmen's compensation, (5) of the share of the highway department in any retirement program for state employees as may be provided by law, (6) and of administering and enforcing any state motor vehicle laws or traffic regulations, shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other:* * *."

This section would seem to indicate that any Motor Fuel Taxes are incidental to the right to use the highways of the state, since motor fuel privilege taxes are included in the general grouping of revenue derived as an incident to the use of the highways of the state. Such a construction would lead one to believe that the Constitutional Convention considered the present Motor Fuel Tax Act as one for the privilege of using the highways and this would take it out of Article III, of Section 39, subsection (10) of the new Constitution. For the above reasons it is our opinion that the Motor Fuel Tax

Act of 1943 should be construed to be a tax on the privilege of using the highways of the State of Missouri.

CONCLUSION

It is, therefore, the opinion of this department that the county of St. Louis is liable under the Motor Vehicle Fuel Tax Act, Laws of 1943, pages 670-699, from date until July 1, 1946, because (1) the Constitution of 1945 operates prospectively and not retroactively and (2) Section 2 of the Schedule appended to the new Constitution provides that laws, even if inconsistent, shall be effective until July 1, 1946, unless sooner repealed or amended.

It is, further, the opinion of this department that under the two legal theories which together make up the great weight of authority, and for the additional reasons set out in this opinion the county of St. Louis is liable under the Motor Vehicle Fuel Tax Act, Laws of 1943, pages 670-699, after July 1, 1946, as well as from the present time until that date.

Respectfully submitted,

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APPROVED:

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