TAXATION: Allocation clause of House Bill No. 14 is unconstitutional on account of class legislation.

February 23, 1939

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Hon. L.N. Searcy
State Senator
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

> "We would appreciate it very much if we could receive an opinion from your office on House Bill #14 as to the constitutionality of Sec. 7794 pertaining to allocation of the moneys received."

House Bill No. 14 of the 60th General Assembly, partially reads as follows:

> "All moneys collected from the motor vehicle fuel tax and the motor vehicle registration fees as herein provided shall be allocated and expended by the highway commission of Missouri in the following manner: Fifty per cent of all moneys so collected shall be expended for construction and maintenance of primary and secondary roads; twenty per cent of all moneys collected shall be expended for the construction and maintenance of supplementary roads; twenty per cent of all moneys collected shall be expended in the construction of highways and traffic diversions in and through the cities of this state having a population of more than 2,500 and ten per cent of the money so collected shall be expended under the direction of the state highway commission."

The above paragraph, of course, is subject to Article X, Section 19 of the Constitution of Missouri, which reads as follows:

> "No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Although this house bill gives the authority to the Highway Commission of Missouri to allocate the money paid in under this tax provision to different road systems, it is yet under the supervision of the Legislature that the money must be appropriated out of the general fund to the State Highway Commission. This paragraph is a violation of Article IV, Section 53, paragraph 33 of the Constitution of the State of Missouri, which reads as follows:

> "Nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed."

That part of the above paragraph underlined of House Bill No. 14 is class legislation according to the holding of the Supreme Court of this state, and should read as follows:

> " * * * cities of this state now having or which may hereafter have a population of more than 2,500."

In the case of State ex inf. Barker, Atty. Gen. v. Southern et al, 177 S.W. 640, l.c. 643, the court said:

> "It has been repeatedly decided in this state that classification according to population was sufficient to render an act containing such a classification a general law. State ex inf. Crow Attorney General v. Continental Tobacco Co. et al., 177 Mo. 1, 75 S.W. 737; State ex rel. v. County Court, 128 Mo. loc. cit. 442, 30 S.W. 103, 31 S.W. 23; State ex rel. v. Bell, 119 Mo. 70, 24 S.W. 765. Nor has the rule as to such a standard been altered by the fact that such an act has been found applicable only to one city. State ex inf. Crow, Attorney General, et al. v. Fleming et al., 147 Mo. 1, 44 S.W. 758; State ex rel. v. Mason, 155 Mo. 486, 55 S.W. 636; State v. Edward J. Keating, 202 Mo. 197, 100 S.W. 648; State ex rel. Attorney General v. Speed, 183 Mo. 186, 81 S.W. 1260; Ex parte Lucas, 160 Mo. 219, 61 S.W. 218. The evident motive of the Legislature in the enactment of the clause under consideration was to classify the counties of the state as they then or in the future might have a population exceeding 50,000 and taxable property exceeding $45,000,000, for the reason that the counties which should fall within such a class would naturally have different and greater needs, corresponding to the differences between their condition and other counties of less population and less wealth. Neither did the Legislature lose sight of this object in the disjunctive part of the sentence which provided that counties adjoining or containing then or in the future a city of more than 100,000 inhabitants should belong to the same class. The purpose in each clause of the sentence was tocreate a distinction based upon

> differences in population and in wealth; for if, as the Legislature rightfully assumed, counties of 50,000 inhabitants would acquire coincidentally a taxable wealth of $45,000,000, it might be well assumed that such counties would not have less wealth when they should embrace or adjoin cities containing 100,000 inhabitants."

Also, in the case of State ex inf. Gentry, v. Armstrong, et al., 286 S.W. 705, l.c. 708, the court said:

> "The doctrine of classification by population in the enactment of laws is being much overworked. We have ruled, however, that population may be made the basis of classification, provided that the law covers an existing class, a part of which may come into existence by natural growth after the act, provided the legislative classification expressly so provides, by using the term "counties now having, or hereafter having" the stated population."

CONCLUSION.

In view of the above authorities, it is the opinion of this department that the paragraph of House Bill No. 14, as above set out, would be considered by the court as unconstitutional, for the reason that it is class legislation, and if this paragraph should be considered unconstitutional, not withstanding Section 2 of House Bill No. 14, it would affect the whole act.

Respectfully submitted,

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APPROVED By:

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WJB:VAC