SALES TAX ACT: Sales to churches, schools, court houses, clubs, fraternal organizations, post offices, to municipalities for municipal purposes of electricity, gas and water exempt under sub-section(b) Section 2a House Bill No. 5

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March 7, 1934.

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Honorable Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of February 27, 1934, which reads as follows:

> "I would be pleased to have the opinion of the Attorney General upon the following question: What, if any, of the following sales of electricity, gas or water made by a public utility is taxable under the Missouri Retailers' Occupation Tax Act (House Bill No. 5): (1) sales to churches, (2) to schools, (3) to court houses, (4) to clubs or fraternal organizations, (5) to post offices, (6) to municipalities for municipal purposes such as electricity to light the city streets or water to extinguish fires?"

In the original opinion prepared by this department relating to general interpretations of the various phases of the Act, we defined "domestic consumers" as follows:

> "'Domestic consumers' are those who consume electricity or electric current for household or domestic purposes,"

and "commercial consumers" as follows:

> "'Commercial consumers' are those who use electricity or electric current for trade or commercial purposes",

and "industrial consumers" as follows:

> "Industrial consumer" is one who uses electricity or electric current for manufacturing, power and like purposes."

Bearing these definitions in mind, in 61 C. J. 168 it was said:

> "A tax cannot be extended by a construction to things not described as the subject of taxation."

In Converse, et al. v. Northern Pacific Railway Co., 2 Fed. (2nd) 959, the court said:

> "It is an unbroken rule of the Federal courts that no property is subject to taxation unless the legislative intent to tax it is clearly made manifest."

And again in the same case, we find the following:

> "With the State practically all powerful in its selection of the subjects of taxation and the amount of tax which shall be levied, the helplessness of the citizen demands, for his protection, that if the Legislature intends to tax him, it shall at least be required to say so, in clear and unmistakable terms."

It is to be borne in mind that this is not a property tax. It is a privilege or occupational tax wherein the amount of the service rendered and the charge therefor become the measuring stick as to the amount of the tax which shall be paid, but we think the general principles regarding taxation are applicable to the occupational tax. As was said in the case of State ex rel. v. Alt, 224 Mo. 493:

> "It is axiomatic that the authority to tax a citizen must be found in the regular laws and not be made to depend on a matter of inference or implication."

Finally the question resolves itself as to whether or not sales of electricity to the various institutions as mentioned in your letter can be classified in any one of the three consumers as mentioned in sub-section (b) of Section 2a of the House Bill, which is as follows:

> "Sales of electricity or electrical current, water, sewer service, gas (natural or artificial), to domestic,

commercial or industrial consumers."

The institutions which you mention manifestly could not be classed as commercial or industrial consumers unless organized for profit or gain. The only remaining classification concerning which there might be a doubt being 'domestic' consumers.

In the case of Erie v. Gas Company, 78 Kans. 1. c. 354, the court discusses the question in the following language:

> "In presenting its estimates for the computation of profits counsel for the plaintiff deduct from the amount of sales within the city the amount received from sales to manufacturers. The defendant now contends that there should be a reduction for gas sold to churches, the opera house, stores and offices--that these are not 'domestic purposes.' The term was properly used with reference to the ordinary distinction usually made in the sale of gas for light and heat for the comfort and convenience of individuals in their homes, offices, stores, churches and the like, and sales made to manufacturers to generate power. Usually, reductions are made for the latter purpose from the schedule of prices for the former. The term 'domestic' has a widely varying meaning, and while its primary significance relates to the house or home, it is often used in a vastly broader sense. Its significance must always be determined with reference to the subject-matter and the relation in which it appears. In this contract, and with reference to this subject, the more reasonable view is that it applies not only to the homes of the city, but to other places named where its principal use is for heating and light, and not for power. It appears that the parties construed the term to exclude only manufacturing purposes."

In reading the case in its entirety we are of the opinion that it deals with a somewhat different situation as it appeared

that both parties to the contract sued on had originally intended that the term 'domestic purposes' included gas furnished for homes, churches, stores, offices and opera houses where its principal use is for heating and lighting and not for power. Since the legislature saw fit in the particular sub-section quoted above, which relates to electricity, to place restrictions on the gross receipts of the services derived from the same, namely, to domestic, commercial or industrial consumers, we are to imply that by said restrictions the legislature evidently intended that some instances would not come under these three classifications, and hence would be exempted. The other sub-sections of Section 2a of the act appear to have no restrictions and to be all inclusive. The Civil Code of Idaho, Section 2591, defines the phrase 'domestic purposes' as contained in the chapter dealing with water rights and irrigation,

> "Shall be construed to include water for household in a sufficient amount for the use of domestic animals kept with and for the use of the household."

The decision in the case of Mitchell v. Tulka Water Company, 95 Pac. 961, the court said the following:

> "The language of an ordinance granting a franchise to a waterworks company that water 'to supply domestic use' shall be supplied from wells, adjacent to a particular river, does not include water to supply the streets, lanes, alleys, squares and public places of the city, or to be used in extinguishing fire."

CONCLUSION

In view of the authorities compelling a clear legislative intent before a return should be made for the tax, and the decisions herein cited, we are of the opinion that the institutions mentioned in your letter, namely;

(1) churches, (2) schools when not privately owned or organized for gain or profit, and we would include all state, city and public schools, (3) court houses, jails, almshouses, eleemosynary institutions, (4) fraternal organizations, (5) clubs when not organized for profit or gain, (6) post-offices and all federal court houses and buildings, (7)

municipalities: the lighting of city streets, parks, city courts and all other municipally owned institutions which are organized and conducted not for gain or profit, the gross receipts from the same should be deducted by the electrical, gas or water company in making their returns.

This conclusion relates solely to subsection (b) of Section 2a of House Bill No. 5 and is not construed to be applicable to all of the other subsections contained in said Section 2a.

Respectfully submitted,

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Assistant Attorney-General.

APPROVED:

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