SALES TAX ACT: Sales of electricity, gas and water to cities for street lighting, white way system, traffic signal lights,etc., are not subject to the tax.

8-30

August 27, 1935

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Hon. Fred F. Wesner
City Counselor
Sedalia,Missouri

Dear Sir:

This department is in receipt of your letter of August 23 requesting an opinion as to the electric light and water sold by the City of Sedalia as a municipal corporation being subject to the sales tax which becomes effective August 27. Your letter is as follows:

> "The question has arisen as to the liability of the City of Sedalia in connection with its liability to pay the one (1) per cent sales tax on its current electric light and water bill as a municipal corporation, under subdivision (c) of Section 2 of said Act.
>
> I thought perhaps that some prosecuting attorney may have raised the question with your office as to the liability of a county or other municipalities in the county and that you may have rendered an opinion in this connection. If so, I would appreciate receiving a copy of same.
>
> It is my understanding that Kansas City and perhaps St. Louis are disputing their liability to pay this tax. Will appreciate any information that you have in hand that might enlighten us in this connection."

We are also in receipt of your supplemental letter of August 28, which contains the following supplementary paragraph:

> "The City carries a general account, due and payable monthly, with each the City Light & Traction Company, and the Sedalia Water Company, for electrical current used generally by the City for street lighting,white way system, traffic signal lights,and so on, and the Water Company for water used at the City Hall, City Parks, and fire hydrant rentals. Subdivision (c) of Section 2 of the Sales Tax Act,Laws of Missouri, 1935, Page 415 provides, 'A tax equivalent to one (1) per cent of amounts paid or charged on all sales of electricity or electrical current, water and gas (natural or artificial), to domestic, commercial or industrial consumers.' "

The original Occupation or Privilege Tax Act,under Section 2a, page 157 of the Extra Session Acts of 1933-1934, sub-section (b), in imposing a tax of one-half of one per cent on the gross receipts for the furnishing of services, substances and things, states:

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

while the new Sales Tax Act which became effective August 27, page 415 Laws of Missouri 1935, under Section 2, sub-section (c) states,

> "A tax equivalent to one per cent. of amounts paid or charged on all sales of electricity or electrical current, water and gas (natural or artificial), to domestic, commercial or industrial consumers."

While the wording of the two acts differs slightly, we think that there is no change or modification of the meaning and the construction to be placed on the liability of those coming within its terms. Under Section 2, page 415, the Legislature saw fit to place the tax of one per cent of the amounts paid or charged for the services definitely mentioned containing sub-sections (b) to (i), inclusive. In only one sub-section, that being the one relating to sales of electricity, water and gas, did the Legislature see fit to limit the class of purchasers, and if the electricity consumed by the streets, white way system, traffic signal lights, etc., of the City of Sedalia, and likewise the water so consumed, is subject to the tax, the light and water so consumed must come within one of the divisions or classes of consumers, namely, domestic, commercial or industrial.

Webster's Dictionary defines "domestic consumers" as "those who consume electricity or electrical current for household or domestic purposes."

In the case of Railroad v. United States 249 Fed. 822, "commercial consumers" are defined as "those who use electricity or electrical current for trade or commercial purposes."

In the case of Wells Fargo v. Railroad 23 Fed. 469, an "industrial consumer" is defined as "One who uses electricity or electrical current for manufacturing power and like purposes."

At the very outset we are eliminating commercial and industrial consumers, as,by the terms of the definitions given above, and by our ordinary conception of those terms, the water and light used by the city itself, as mentioned in your letter, could not be classed as industrial or commercial consumer. Having eliminated those two classes we are concerned with the question of whether or not the water and lights so used by the city could be classed as domestic consumption.

In the case of Henderson v. Shreveport Gas, Electric Light and Power Company 63 So. 616, l. c. 618, the word "domestic" is defined as meaning "a thing of or pertaining to one's house or home, or one's household or family, and excludes the idea of business; unless one pursues his vocation

or calling within his home."

In the case of Catto v. Plant 106 Conn. 236, the term "domestic" is defined as having a widely varied meaning, and, while its primary significance relates to the house or home, it is often used in a vastly broader sense and its significance is determinable with reference to the subject matter and the relation in which it appears.

A decision relating to domestic purposes broadens the field in the case of Erir v. Gas Company 78 Kans. l.c. 354, 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 also be a reduction for gas sold to churches, the opera-house, stores, and offices - that these are not 'domestic purposes.' The term was probably 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 lighting, and not for power. It appears that the parties construed the term to exclude only manufacturing

purposes. The secretary and manager of the company, after stating as a witness the amount of sales for all purposes, and deducting the amount of sales for manufacturing purposes in the city, and giving the balance, was asked: * * * * * * * *"

CONCLUSION

We cannot determine from the reading of the whole act the intention of the Legislature with reference to the section under discussion, but we construe that it was the intention of the Legislature to exempt from the tax all users and consumers of electricity, gas and water, if said users and consumers did not come within the meaning of domestic consumers or industrial consumers; on the other hand, it may have been the intention of the Legislature, in designating three classes, that by common usage the three terms were broad enough to include every kind and type of consumer or user. We are inclined to accept the first statement as the intention of the Legislature, namely, to exclude from liability of the tax all who do not come within the class of industrial, commercial or domestic consumers.

We are of the opinion that electrical current and water supplied to a city for street lighting, white way system, traffic signal lights, city administration buildings, court houses and county buildings, churches, city auditoriums (when not used for commercial purposes) and city parks, likewise, water and gas when so used and consumed, do not constitute domestic consumption within the meaning of the act, and, therefore, such sales are not liable for the tax.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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