

April 27, 1938.

Honorable John J. Downey
Police Commissioner
5th and Francis Streets
St. Joseph, Missouri



Dear Sir:

We acknowledge your letter of April 22d, 1938 requesting an opinion of this department, which letter reads as follows:

- "The State law provides that the Police Department may receive up to one-sixth of the revenue for the running of the Police Department. The City authorities claim this means one-sixth of the General Revenue, which would be \$150,000.00.
- "It requires about \$175,000.00 to run our Police Force at its present capacity. One-sixth of the revenue would amount to considerable over \$200,000.00.
- "Will you not please check up this matter for me and advise me what the construction of the Attorney General's office is regarding same at your earliest possible convenience? The Mayor and City Council took off 60% of the Police pay-roll from April 1st to April 15th, as we had run over our appropriation of \$170,000.00 that amount. We will have another pay-roll to meet on April 30th and should have the information several days in advance so that we might know what action to take if the Mayor and City

Council cut the annual appropriation, as has been threatened."

St. Joseph operates as a city of the first class under the provisions of Article II, Chapter 38, R. S. Mo. 1929.

Section 6364, Laws Mo. 1937, page 389, provides for the police personnel and gives the Police Board power to appoint police officers, as the service requires, but fixes and limits the number, salaries and the term of office of said police officers. By this section the Legislature has set up a scheme of organization for the Police Department which the Board is bound to follow in the performance of their duties.

Section 6369, R. S. Mo. 1929 provides as follows:

"It shall be the duty of said board, prior to the 25th day of April of each year, to estimate what sum of money will be necessary for each current fiscal year to enable them to discharge the duties hereby imposed upon them, and they shall forthwith certify the same to the common council of such city, who are hereby required, in each monthly appropriation or ordinance of that fiscal year, to set apart and appropriate the one-twelfth part of the amount so certified, which sum shall at once be paid by the city treasurer to the treasurer of the board of police upon a warrant drawn by the president and countersigned by the comptroller: Provided, that if the said board shall be required to create an extra police force, as provided herein, and the expense of such extra force be contemplated in their said estimate, they shall immediately certify the expense of such additional force to the common council, who are hereby required, as soon as possible, to set apart and appropriate the additional amount so required, agreeably

to this section. The said board of police are hereby authorized to make requisition from time to time upon the mayor, auditor, treasurer, comptroller or other proper disbursing officer or officers of the corporation of such city for such sums as they may deem necessary for executing their duties under this article, and the sums so required shall be paid by said proper disbursing officer or officers out of any money in the city treasury not otherwise appropriated: Provided, that in no event shall a common council be required to appropriate for the use of the police board in any fiscal year an amount of money in excess of one-sixth of the revenue of such year; and provided, also, that the amount so required or drawn shall not exceed in any one year the amount certified as aforesaid to the common council for that year, including any additional amount which may have been ordered by said common council to be paid for or on account of any extra police force as hereinbefore provided; that the common council of the city shall have no power or authority to levy or collect any tax or appropriate and disburse any money for the payment of any police force other than that to be organized or employed under this article, and the power of the mayor and common council of such city to appropriate and disburse money for the payment of the police force to be organized or employed under this article shall be exercised as in this section directed, and not otherwise: Provided further, that said police board shall not increase any salary and shall not increase the number of men on the force unless authorized so to do by the city council; but it may reduce the number of men or officers, or both, at any time that it may think proper or necessary."

As we understand it, your question might be stated thus: What revenue is meant in the foregoing proviso which reads as follows: "Provided, that in no event shall a common council be required to appropriate for the use of the police board in any fiscal year an amount of money in excess of one-sixth of the revenue of such year"?

In the case of *State ex rel. vs. Gordon*, 266 Mo. 394, the Supreme Court discussed the question of the meaning of the word "revenue", as used in connection with state finances. After enumerating the various definitions of the word "revenue", the court said: (l.c. 407-8)

"Clearly the word 'revenue' is broader than and includes taxation, as well as all other sources of municipal income. Revenue may be said to be the genus, while taxation is but a species. We are convinced therefore that the word 'revenue,' as used in the appropriation act under discussion, when standing alone, and when not modified by the word 'ordinary' (which we shall later discuss, when we come to sum up our conclusions), means: The annual and current income of the State, however derived, which is subject to appropriation for general public uses. This excludes such income as the Constitution, or any permanent existing law, may specifically devote to a special purpose, in contradistinction to a general public use or which is not required to be paid into the State Revenue Fund, but into a special fund, e. g., the collateral inheritance tax, specifically collected for the support of the State University and its departments (Sec. 312, R. S. 1909); the money derived from license fees on motor vehicles (Laws 1911, p. 331, sec. 13); fees paid into the State Treasury to the credit of the 'Insurance Department Fund' (Sec. 6884, R. S. 1909); and others of similar sort."

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Following the foregoing definition and applying same to city finances, the meaning of the word "revenue", as applied to city revenue, would be the annual and current income of the city, however derived, which is subject to appropriation for general public uses. Such a definition would automatically exclude such revenue as the city collects for specific purposes, since such revenue is "ear-marked" when it comes into the treasury. For example, money derived from a library tax is not subject to appropriation by the common council for general public uses, such as street repairs, street lighting, etc., and hence such money would not be a part of the revenue of the city as that term is used in the statute under discussion. Likewise, money derived from other special taxes would not be a part of the revenue of the city which could be appropriated by the common council for general public uses.

CONCLUSION.

It is, therefore, the opinion of this office that the word "revenue", as used in Section 6369, R. S. Mo. 1929, means the annual and current income of the city, however derived, which is subject to appropriation by the common council for general public uses.

Yours very truly

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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