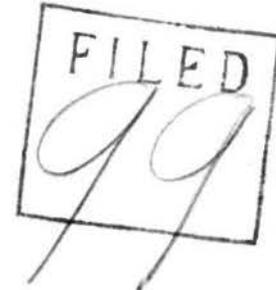


ANIMALS: County dog law is constitutional in that it does
DOG LAW: not violate Section 3, Article X of the Constitution.

November 17, 1938

Mr. Claude T. Wood
Prosecuting Attorney
Waynesville, Missouri



Dear Sir:

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

"I should like to know whether or not sections 12872 to 12874C, inclusive, pages 225 and 226 of the Laws of Missouri for 1937, violate Section 3 of Article X of the Missouri Constitution, particular reference being had to sections 12874A, 12874B and 12874C, supra. If unconstitutional, what is the status of Article 12, Chapter 88, R.S. 1929?"

Section 12872, Laws of Missouri 1937, page 225, provides that no dog shall be permitted in the state unless a tax has been paid upon it.

Section 12873, Laws of Missouri 1937, page 225, provides that the tax on each male dog or spayed female dog is one dollar (\$1.00) per year and on all other dogs shall be three dollars (\$3.00) per year.

Section 12874, Laws of Missouri 1937, page 225, provides for the issuance of a license and a certificate by the county clerk and that all moneys less the cost of license tags and other costs including a fee to the clerk shall be sent to the treasurer who shall set up what is known as "county dog

license fund" which fund shall be used only for "the purpose of compensating persons who have suffered loss or damage through injury or killing by dogs of any live stock or poultry owned by them.* * *"

Section 12874A, Laws of Missouri, 1937, page 226, provides that the owner of livestock or poultry injured or killed by dogs may, upon making a written application, a form of which is set forth in the statute, receive a portion of the license fund.

Section 12874B, Laws of Missouri 1937, page 226, provides that the county court shall each year examine such applications and pass judgment upon them.

Section 12874C, Laws of Missouri 1937, page 226, provides that the county court shall keep a record and after deciding the person is entitled to be compensated for injury or death of livestock or poultry by dogs shall draw warrants upon the fund. If there is not sufficient money in the fund then all claims shall be allowed pro rata.

We call your attention to Section 12881, R. S. Missouri 1929, which provides that the provisions of these statutes are not effective until voted by the people.

Section 3, Article X of the Constitution of Missouri, provides as follows:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

The purpose and object of the statutes is not to impose a tax but to license dogs and regulate the manner in which they may be kept within the state. It is not a revenue measure but

is a method adopted by the Legislature of regulating the keeping of dogs and to discourage persons from keeping or harboring worthless dogs with vicious tendencies. This is valid exercise of the police power of the state. There is a marked distinction between taxation for revenue and the imposition of a license fee for the purpose of regulation in the exercise of the police power. As was said in *City of Carthage vs. Phodes*, 101 Mo. 175, 1. c. 178, 14 S.W. 181, 9 L.R.A. 352, 177-178:

"Taxation may be for the purpose of raising revenue, or for the purpose of regulation; where the purpose of regulation it is an exercise of the police power of the state. They are both distinct, co-existent powers in the state and either or both may be exercised through a municipal corporation. In this case, by the terms of the charter, both powers are granted to the city of Carthage as to the dogs of that city. The dog-license tax required by its ordinances is easily referable to the exercise of the police power granted. While, in a sense, dogs are property, and the power may invoke the aid of the law for their protection as property by civil action, and by statute they have been made the subject of larceny, yet, they are a base sort of property, having no market or assessable value, do not enter into the estimate of the appreciable wealth of the state, and never have been considered proper subjects of taxation for revenue. On the other hand their almost utter worthlessness in a crowded city for any purpose except to please the whim or caprice of their owners, the half savage nature and predatory disposition of so many of them, rendering them destructive of animals

of real value, and their liability to the fatal malady of hydrophobia which in so many instances has sent them abroad as messengers of death to man and beast, point them out as subjects peculiarly fit for police regulation.

"The ordinances in question being an exercise of the police power granted by the state are not obnoxious to the constitutional provision quoted, which is not a limitation upon the police power, but upon the taxing power of the state.* * * * *"

In Van Horn vs. People, 46 Mich. 183, 9 N.W. 246, a statute identical with that in Missouri was under consideration. The Court said:

"The enactment does not appear to be for revenue or to raise money by way of tax, as that expression is there made use of* * * *. It is a species of legislation which pertains to another department of power, and where the state, in pursuing its duty to accommodate as far as practicable the desire and the right to keep dogs to the more beneficial right of breeding and keeping sheep, has seen fit to apply the method marked out in this statute. The act is an exertion of the police power, and no reason is perceived for denying its validity. In consequence of the acknowledges excellence of some of their traits and their remarkable attachment to mankind, and on account, at the same time, of their liability to break through all discipline and act according to their original savage nature, and because also of their liability

to madness, it has been customary always to make dogs the subject of special and peculiar regulations.'"

In that case the court further said:

"As the charge laid on the owners of dogs is a pecuniary burden imposed by public authority, it partakes, no doubt, of the character of a tax, and for many purposes might be so spoken of without harm. But no accession of public revenue, either general or local, is authorized or aimed at. The end sought is different. The purpose is to prescribe a regulation under which dogs, as animals dangerous to sheep, and of far less public utility, can alone be held, and which, if carried out, will tend to discourage an undue increase of dogs, and at the same time will afford new protection against the effects of the mischief to which they are most given.'"

In *Hofer vs. Carson*, 203 Pac. 323 (Or.), a dog license act similar to the Missouri Act was attacked on the grounds that it contravened a constitutional provision declaring that:

"all taxes shall be levied and collected under general laws operating uniformly throughout the state,'"

The Court said:

"The purpose of the act under consideration is not to impose a tax, but to license dogs and to regulate the manner in which they may be kept within the state. This is a matter entirely within the police power of the state, and is a valid exercise of that power."

In *McGlone vs. Womack*, 129 Ky. 274, 111 S.W. 688, the court held that a tax on dogs to provide funds to make good losses of sheep caused by dogs is not within the constitutional provision requiring taxes to be for public purposes nor did it violate a constitutional provision prohibiting the granting of exclusive or express public emoluments or privileges.

Moreover, as was said in *State vs. Anderson*, 114 Tenn. 564, 234 S.W. 768:

"That female dogs are charged a higher license fee than male dogs does not make the ordinance invalid."

Other jurisdictions which have declared dog license laws, proceeds of which are to go to owners of stock who have suffered loss, to be constitutional are *Cole vs. Hall*, 103 Ill. 30; *State vs. Cornnall*, 27 Ind. 120; *Holst vs. Roe*, 39 Ohio St. 340; *Stokes County vs. George*, 182 N.C. 414, 109 S.E. 77; *McQueen vs. Kittitas County*, 198 Pac. 394 (Wash.); *People ex rel. Dawley vs. Wilson*, 232 N.Y. 12, 133 N.E. 45; *State vs. Anderson*, 144 Tenn. 564, 234 S.W. 768.

The only case that we can find which has held such a law unconstitutional is *Bowen vs. Tioga County Ct.* 613, but in view of the authorities set forth above we believe that such a case is of little authority.

CONCLUSION

It is, therefore, the opinion of this Department that a license fee imposed on dogs to provide funds to make good losses of livestock or poultry injured or killed by dogs as is provided for in Article 12, chapter 88 of the Statutes of Missouri, sections 12872 to 12881, inclusive does not contravene section 3, Article X of the Constitution of Missouri which provides that all taxes must be uniform and for a public purpose and must be levied and collected by general laws because such a license fee is imposed under the police power of the state and is not a tax.

APPROVED:

Respectfully submitted

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