

LEGISLATURE :
CONSTITUTION:

House Bill No. 72, as perfected by the 66th
General Assembly, is constitutional.

April 20, 1951

Honorable Cecil T. Taylor
Representative, Shelby County
66th General Assembly
Jefferson City, Missouri

4-25-51
FILED
88

Dear Mr. Taylor:

This will acknowledge receipt of your request for an
official opinion which reads:

"You remember my conversation with you
yesterday concerning my wanting an opin-
ion of your office as to the constitu-
tionality of House Bill No. 72, which is
now in Senate committee.

"I am enclosing a copy of this bill and
refer you to Page 2, Section 2, and word-
ing as outlined. I would appreciate your
opinion in this respect at your very earli-
est convenience. The wording in Section 2,
I maintain, is in conformity with the con-
stitution, Article 10, Section 4 (a) which
gives us the right to classify properties
within classes two and three, based solely
on the nature and character of the property.
You will notice that this property is to be
taxed 10 percentum of its value."

The law you are attempting to amend, namely Section
137.115, RSMo 1949, now requires the assessor or deputy to
make a list of all real and tangible property in the county,
town or district and assess same at the true value in money,
and also the assessor shall require persons to make a correct
list of such property. The only exception contained therein
is that on merchandise where the owner may be required to pay
a license tax and also except all other property which may be
exempted by law from taxation. Said section reads:

"1. After receiving the necessary forms
the assessor or his deputy or deputies
shall, except in the city of St. Louis,
between the first day of January and the

Honorable Cecil T. Taylor

first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town or district, and assess the same at its true value in money in the manner following, to wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable real and tangible personal property in the county owned by such person, except merchandise which may be required to pay a license tax and except all other property which may be exempted by law from taxation.

"2. The person listing the property shall enter a true or correct statement of such property, in a printed blank prepared for that purpose, which statement after being filled out shall be signed and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor."

The proposed House Bill No. 72 merely contains another exception which is that of agricultural field crops in an unmanufactured condition which are used or intended to be used solely as seed or in the feeding of livestock or poultry, and further declaring that same shall constitute a separate class of tangible personal property to be assessed for the purpose of taxation at 10 per cent of their true value in money.

One of the primary rules of the construction of statutes is to ascertain the lawmakers' intent from the words used, if possible. See *Union Electric Company v. Morris*, 222 S.W. (2d) 767, 359 Mo. 564. Also *State ex rel. Lentien v. State Board of Health*, 65 S.W. (2d) 943, 334 Mo. 220.

In determining whether the foregoing exception contained in the proposed House Bill No. 72 constitutes a proper classification under the Constitution and laws of this state, it is necessary to examine Section 4(a) and Section 4(b), Article X, Constitution of Missouri, 1945. Section 4(a), supra, provides that all taxable property shall be classified as follows: (1) real; (2) tangible personal; (3) intangible personal.

Honorable Cecil T. Taylor

It further provides that the General Assembly may provide classification within Classes 2 and 3, based solely on nature and characteristics of the property and not nature, residence or business of the owner, or the amount owned. Section 4(b), supra, provides that property in Classes 1 and 2 and sub-class 2 shall be assessed for taxation purposes at its true value or percentage of value as may be fixed by law for each class and for each sub-class of Class 2. The foregoing provisions read:

"Sec. 4(a).* Classification of Taxable Property--Taxes on Franchises, Incomes, Excises and Licenses.--All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The general assembly, by general law, may provide for further classification within Classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types.

"Sec. 4(b).* Basis of Assessment of Tangible Property--Taxation of Intangibles--Limitation.--Property in Classes 1 and 2 and subclasses of Class 2, shall be assessed for tax purposes at its value or such percentage of its value as may be fixed by law for each class and for each subclass of Class 2. Property in Class 3 and its subclasses shall be taxed only to the extent authorized and at the rate fixed by law for each class and subclass, and the tax shall be based on the annual yield and shall not exceed eight per cent thereof."

There can be no question about this commodity which has been made an exception under Section 137.115, supra, as amended, being tangible personal property, which falls within Classification 2 of the foregoing constitutional provisions. The Constitution provides that the General Assembly may provide

Honorable Cecil T. Taylor

classification within Class 2, based solely on nature and characteristics of the property. "Nature" has been defined as those qualities which inhere in and pertain to it, or the sum of qualities and attributes which make a thing what it is distinguished from others. In *Schultz v. Howard*, 65 N.W. 363, 63 Minn. 196, 56 Ann. St. Rep. 640, the court, in defining "nature," said:

" * * * Assuming that the Globe National Bank, at which the notes were payable, is in Illinois, this statute, if pleaded, would have been decisive of the case, for it is settled law that the place of the contract regulates its validity, interpretation, and the nature of its obligation. By 'nature' is meant those qualities which inhere in and pertain to it; as whether it is joint, or joint and several. * * * "

Webster's New International Dictionary, Second Edition, further defines "nature" as follows:

"1. The essential character or constitution of a particular thing, a species, or a kind; distinguishing quality or qualities; essence; as, the nature of steel, of matter, of love, or a literary movement. * * * "

"Characteristic" has been defined by Webster's New International Dictionary as a trait, quality or property distinguishing an individual, group or type. It cannot be denied that this proposed classification under House Bill No. 72, as perfected, in no manner is based solely on residence, business of the owner, or the amount involved; but, it appears that it is based solely upon the nature and characteristics of the property under the foregoing definitions of those words as used in the foregoing constitutional provisions.

Neither can it be said that this is a special or local law, and by reason thereof, it violates the Constitution of this state. It has been held that an act which embraces all persons who are or who may come into like situations and circumstances is not a special act. See *City of Springfield v. Smith*, 19 S.W. (2d) 1, 322 Mo. 1129; *State ex rel. Martin v. Wafford*, 121 Mo. 61. Also, it has been held that a law which affects equally all persons who come within its operation is not a local or special law. See *State ex rel. Moseley, et al. v. Lee, et al.*, 5 S.W. (2d) 83, and *Waterman v. Chicago, Bridge & Iron Works*, 41 S.W. (2d) 575. However, it is no longer

Honorable Cecil T. Taylor

material whether it is special or local law since there is now no inhibition against the General Assembly passing a local or special law exempting property from taxation. Section 53, Article IV, Constitution of Missouri, 1875, sub-section 23, contained a specific prohibition against the Legislature passing any special or local law exempting property from taxation. No similar provision is contained in the Constitution of Missouri, 1945.

In the instant case, under the foregoing constitutional provisions, namely Section 4(a) and Section 4(b), Article X, Constitution of 1945, which specifically grants the General Assembly authority to provide for classification within Classes 2 and 3, based solely upon the nature and characteristics of the property, and further providing that property in Class 2 and sub-class 2, which sub-class includes the commodity made herein an exception under House Bill No. 72, supra, shall be assessed for taxation purposes at a percentage of its value as may be fixed by law, we must conclude that House Bill No. 72, as perfected, is constitutional.

CONCLUSION

It is the opinion of this department that House Bill No. 72, as perfected by the 66th General Assembly of the State of Missouri, does not conflict with the provisions of Section 4(a) and Section 4(b), Article X, Constitution of Missouri, 1945, and, therefore, said bill is constitutional.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

ARH:VLM