

TAXATION (CITIES, TOWNS & VILLAGES):
EARNINGS TAX:

The cities of Kansas City and Independence cannot, whether by statute or by city charter, enter into an agreement whereby each would rebate to the other earnings taxes collected from residents of the other city.

OPINION NO. 28A

March 19, 1970

Honorable Jack E. Gant
State Senator-16th District
9517 East 29th Street
Independence, Missouri 64052



Dear Senator Gant:

This is in reply to your request for an official opinion of this office concerning the question whether the cities of Kansas City and Independence could enter into an agreement whereby each would rebate to the other earnings taxes collected from residents of the other city.

First, we observe that both Kansas City and Independence are constitutional charter cities and that the legislature has provided for an earnings tax in Kansas City. See Sections 92.210 through 92.300, RSMo. There is no comparable legislation authorizing an earnings tax for Independence.

Therefore, for purposes of this opinion we will have to assume that Independence will have an earnings tax similar to that provided for Kansas City.

The general scheme of the city earnings tax authorized by statute as it applies to individuals is to tax the earnings by salaries, wages, commissions and other compensation earned by its residents and also the earnings by salaries, wages, commissions and other compensation earned by non-residents of the city for work done or services performed or rendered in the city. See Section 92.210, RSMo Supp. 1967, and Section 92.110, RSMo 1959.

The basic scheme of the earnings tax has been upheld in *Walters v. City of St. Louis, Mo.*, 347 U.S.231, 74 S.Ct.505, 98 L.Ed.660, and in *Arnold v. Berra, Mo.*, 366 S.W.2d 321.

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Your question is whether the two cities can agree to rebate to the other earnings taxes collected on the other city's residents.

At this point we observe that if both cities had an earnings tax, residents of one city working in the other city would be paying a tax on his earnings to both cities. We know of no provisions of law to prohibit this situation.

We also observe that Kansas City has avoided such payment to both cities insofar as Kansas City residents are concerned by allowing a credit under Section 32.154, Earnings Tax Ordinance of Kansas City, which provides as follows:

"Credits for tax paid in another city.

"Every individual taxpayer who resides in the city but who receives profits, salary, wages, commission or other personal service compensation for work done or services rendered outside the city, if it be made to appear that he has paid a city income or earnings tax on such profits, salary, wages, commission or compensation in another city, shall be allowed a credit of the amount so paid by him or in his behalf in such other city, this credit to be applied only to the extent of the tax imposed by this article by reason of such profits, salary, wages, commission or compensation earned in such other city or cities where such tax is paid."

Again, we know of no provision of law to prohibit a taxing authority from granting such a credit.

Furthermore, we know of no law to prohibit each city from enacting an ordinance granting a tax credit to non-residents who have paid an earnings tax to the city of residence.

However, it is our opinion that the cities cannot rebate to the other city an earnings tax collected on non-residents. This in effect would mean that Kansas City would be collecting a tax for another city, but under Kansas City taxing authority. The same would be true of Independence.

Such provision, whether by statute or city charter, would violate the constitutional provisions that a municipality can only tax for its own purposes. Article X, Sections 1 and 11(b), Constitution of Missouri.

CONCLUSION

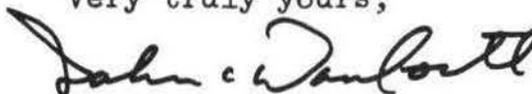
It is the opinion of this office that the cities of Kansas City and Independence cannot, whether by statute or by city charter, enter

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into an agreement whereby each would rebate to the other earnings taxes collected from residents of the other city.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General