

STATE TREASURER:  
DIRECTOR OF REVENUE:  
SALES TAX:  
TAXATION (SALES TAX):

The legislature may not impose the duties set forth in the City Sales Tax Act upon the State Treasurer, but that the portion of the act imposing these duties can be severed from the balance of the act.

OPINION NO. 110

January 12, 1970

Honorable William E. Robinson  
State Treasurer  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Robinson:

You have recently requested that we advise you with regard to your responsibility to perform certain duties that are set forth in the City Sales Tax Act enacted by the 75th General Assembly. House Committee Substitute for House Bill No. 243 was enacted by the 75th General Assembly and is to be cited as the "City Sales Tax Act." Generally, this act enables certain cities, as therein defined, to impose a sales tax for the benefit of the city. Section 2 of the act provides that the city may, by majority vote of its governing body, impose the tax, provided that the proposed tax be approved by a majority of the citizens of the city.

Within ten days after the adoption of the ordinance, the city clerk is to forward to the Director of Revenue of the State of Missouri, a copy of the ordinance which is to reflect the effective date thereof. The tax is to become effective on the first day of the second calendar quarter after the Director of Revenue receives notice of adoption of the tax. The tax is to be implemented, generally, in accordance with the state sales tax set forth in Sections 144.010 to 144.510, RSMo.

Section 4 of the act provides that:

". . . the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the director of revenue shall collect in addition to the sales tax for the state of Missouri the additional tax authorized under the authority of this act. . . ."

The Director of Revenue is authorized to establish administrative rules and regulations for the collection of the tax.

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Section 6 of the act provides:

"1. All city sales taxes collected by the director of revenue under this act on behalf of any city, less two percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in this act, shall be deposited with the state treasurer in a special trust fund, which is hereby created, to be known as the 'City Sales Tax Trust Fund.' The moneys in the city sales tax trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust fund which was collected in each city imposing a city sales tax, and the records shall be open to the inspection of officers of the city and the public. Not later than the tenth day of each month the state treasurer shall distribute all moneys deposited in the trust fund during the preceding month, to the city treasurer, or such other officer as may be designated by the city ordinance, of each city imposing the tax authorized by this act, the sum due the city as certified by the director of revenue."

In addition, under Section 6(2) the Director of Revenue **may** authorize the State Treasurer to make refunds from the amounts in the trust fund and, if the tax is abolished, the Director **of** Revenue shall authorize the State Treasurer, under certain circumstances, to remit the balance in the account to the city and to close the account of that city.

The Director of Revenue is to annually report on his management of the trust fund and is to provide a detailed accounting of the source of all funds received by him for the city.

Article IV, Section 15 of the Constitution of Missouri provides in part:

". . . No duty shall be imposed on the state treasurer by law which is not related to the receipt, investment, custody and disbursement of state funds."

You have asked whether the legislature may constitutionally impose the duties set forth in Section 6 of the City Sales Tax Act upon the State Treasurer.

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For the reasons discussed below, it is our opinion that the legislature may not do so.

That portion of Section 15 of Article IV of the Constitution quoted above was discussed in *Petition of Board of Public Buildings*, 363 S.W.2d 598 (Mo. en banc 1962). There, the State Treasurer was required under a resolution passed by the Board of Public Buildings to handle the proceeds of revenue bonds that were to be issued to finance the office building located in Kansas City, Missouri. The court stated:

"Inasmuch as all this money is in the nature of a special state fund, we see nothing violative of the substantive intent and meaning of §15, Art. 4 in designating the State Treasurer as the one to have custody of the funds. . . . The statutes in question do not provide that the State Treasurer shall be the custodian; in fact they are silent as to the custody. The law has not imposed this duty on the Treasurer; and the prohibition runs against the legislature. . . ." loc. cit. 363 S.W.2d 598, 608

The court ultimately decided that the duties imposed upon the State Treasurer did not violate the constitutional prohibition. However, the court there specifically relied upon its characterization of the revenues as state funds.

In Section 6 of the City Sales Tax Act the legislature has clearly stated that the moneys in the trust fund "shall not be deemed to be state funds." It is also apparent that the legislature has imposed certain duties on the State Treasurer. The moneys received are to be deposited with the State Treasurer and he is to distribute the funds monthly to the appropriate city official. Refunds are to be made by the Treasurer upon the direction of the Director of Revenue. It is our opinion that to the extent that the legislation imposes duties upon the State Treasurer to retain custody of and to dispurse non-state funds, the act is unconstitutional.

Although we believe that the City Sales Tax Act is ineffective to the extent that it requires the Treasurer to perform duties with regard to non-state funds, it is not our opinion that the entire act is invalid for that reason. Section 1.140, RSMo 1959, provides:

"The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute

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are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

It is apparent that the primary purpose of the City Sales Tax Act was to enable the cities to provide for their revenue needs by establishing a sales tax. Because the Department of Revenue of the State of Missouri has in existence collection procedures established for the collection of the State Sales Tax, it appears reasonable to assume a legislative intent to utilize the staff of the Department of Revenue to efficiently collect the tax. That the Director of Revenue is the primary collector of the tax is demonstrated in Section 4 which provides that the:

". . . director of revenue shall perform all functions incident to the administration, collection, enforcement and operation of the tax, . . ."

The establishment of the tax is dependent upon the action of each city and the basic collection procedure rests with the Department of Revenue. The role of the Treasurer is neither essential nor inseparably connected with the valid provisions of the act. Since the Treasurer may not participate in handling these funds, the Director of Revenue must retain the funds and disburse them to the city officials, monthly. The Director of Revenue must, in any case, have custody of these funds initially and the Director of Revenue is required to specify the amounts to be disbursed, and therefore this additional duty may be properly inferred from the statutory language.

The Director of Revenue performs similar functions with regard to the taxes imposed by Chapters 146 and 148. In *City of Fulton v. Home Trust Co.*, 336 Mo. 239, 78 S.W.2d 445 (1934) the court had occasion to construe a statute under which a tax collector was to remit monthly the funds he received. The statute was silent as to the handling of these moneys in the interim. The court concluded that, by implication, the tax collector was to retain these funds until the date upon which they were to be turned over. Thus, the duties which the Treasurer was to perform are not alien to the Office of the Director of Revenue and can be appropriately

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performed by him. Section 4 of the act provides that the Director of Revenue "shall perform all functions incident to the . . . operation of the tax. . . ." The Director of Revenue, therefore, shall perform those duties which were improperly placed upon the Treasurer.

The judicial test to determine whether an unconstitutional provision in a statute can be severed from the valid provision is set forth in *State ex rel. Transport Manufacturing and Equipment Co. v. Bates*, 359 Mo. 1002, 224 S.W.2d 996, 1001 (en banc 1949). The court there stated the test as follows:

". . . It is generally true if the invalid provision of a statute and the residue thereof are wholly independent of each other, readily separable, and completely distinct; and if the residue is of itself complete, sensible and capable of being executed that the invalid provision will fall and the residue of the statute will stand." loc. cit. 224 S.W.2d 996, 1001

Since the tax can be established and collected without the participation of the Treasurer, it is complete and capable of being executed. A further test of whether the valid statutory provisions may be enforced is set forth in *Jackman v. Century Brick Corporation of America*, 412 S.W.2d 111, 114-115 (Mo. 1967). There the court stated that if the eliminated portion of the statute results in legislation entirely different from that which the legislature intended then the entire legislation is invalid. It is apparent, here, that the legislature intended to allow the cities to establish a sales tax and to have this tax collected by the Department of Revenue. These essential features will remain.

In *Barhorst v. City of St. Louis*, 423 S.W.2d 843, 851 (Mo. en banc 1967) enabling legislation through which the City of St. Louis was allowed to enact an earnings tax and the city ordinance establishing the tax were considered by the court. The plaintiffs contended inter alia that a particular group of citizens to whom the tax applied was the subject of discrimination and that the plaintiffs could assert this constitutional deficiency although it did not involve any of the plaintiffs since discrimination as to one group would render the entire act unconstitutional. The court determined that the portion of the law to which plaintiffs objected could be severed from the entire act and, therefore, the plaintiffs had no standing to challenge the act in its entirety. Thus, the invalidity of a severable portion of a statute permitting a city to impose a tax will not invalidate the tax enacted by the city.

#### CONCLUSION

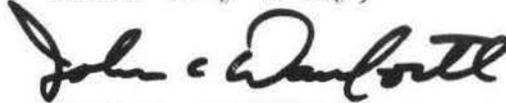
It is, therefore, our opinion that the legislature may not impose the duties set forth in the City Sales Tax Act upon the State

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Treasurer, but that the portion of the act imposing these duties can be severed from the balance of the act.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John Craft.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the printed name and title.

JOHN C. DANFORTH  
Attorney General