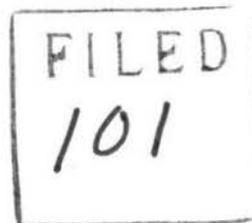


OPINION LETTER NO. 101
Answer by Letter (Danforth)

Honorable E. J. Cantrell
Missouri House of Representatives
306 Capitol Building
Jefferson City, Missouri 65101



Dear Representative Cantrell:

This is in reply to your request for an opinion of this office on the question whether a fourth class city may by ordinance require city license stickers on motor vehicles located on private property. For the reasons stated below, the answer to this question depends on whether the motor vehicles are ever used on the streets of the city enacting the ordinance.

Section 301.340 RSMo 1969 which authorizes municipalities to levy and collect license taxes provides in part:

"Municipalities, by ordinance, may levy and collect license taxes from the owners of and dealers in motor vehicles, residing in such municipalities, and may require the display of license plates or stickers. ..."

"No municipal license tax shall be collected from a resident of any municipality for motor vehicles used exclusively outside of such municipality, and that fact may be shown by an affidavit of the motor vehicle owner for the purpose of securing a state registration certificate without producing a receipt for municipal license taxes. ..."

Section 301.340 contains a table limiting the amount of city license taxes to designated maximum amounts based upon the horsepower or manufacturer's rated capacity of the vehicle.

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On its face, Section 301.340 authorizes municipalities to collect license taxes from resident owners of motor vehicles unless the motor vehicles are "used exclusively outside of such municipality." The question posed in your request does not encompass a vehicle used exclusively outside the municipal boundaries, but a vehicle which is never used on any street or highway, within or without the taxing municipality.

We believe that, in light of the statutory fee scale based on horsepower and manufacturer's rated capacity, Section 301.340 would be viewed by a court as a fee for the privilege of operating motor vehicles, and that it would not be applied if it could be shown that a vehicle is always kept on private property and never operated on a municipality's streets. This view that a city license fee need not be paid unless a vehicle is actually used on city streets is supported by *City of Frankford v. Davis*, 348 SW2d 553 (St.L.Ct.App. 1961) 1.c. 557 where it was said:

"...The only license tax permissible under the enabling act, therefore, the only one permissible under the ordinance, is one against the owner of a motor vehicle who must be a resident of the municipality and who uses or operates said motor vehicle within the municipality. ..."

In an analogous case, the Supreme Court of Missouri has held that a state motor vehicle registration fee is a license fee for the privilege of operating the vehicle on the highways of the state and not a tax on property where the fee is graduated according to the destructiveness of the vehicle to the highway. *State ex rel. McClung v. Becker*, 288 Mo. 607, 233 SW 54 (Banc 1921). It follows that such a license fee for the privilege of operating a motor vehicle on city streets need not be paid when the vehicle is never so operated.

We point out, also, that state license plates are not required on vehicles operated exclusively on the property of the owner. *State v. Hall*, 351 SW2d 460 (K.C.Ct.App. 1961).

Although a municipality may not require a city license sticker on a motor vehicle which is never removed from private property, such a sticker may be required on a vehicle despite the fact that operation on city streets is only occasional.

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In *City of Nevada v. Bastow*, 328 SW2d 45 (K.C.Ct.App. 1959) it was held that a truck was required to comply with a city's licensing ordinance even though the primary use of the truck was on trips between Iowa and Arkansas, and the streets of the city were used only for the purpose of getting to and from a parking area.

Very truly yours,

JOHN C. DANFORTH
Attorney General