

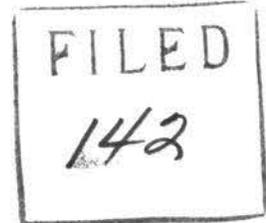
APARTMENT HOUSES:
CITIES, TOWNS & VILLAGES:
TAXATION (CITIES, TOWNS
& VILLAGES):

A third class city cannot levy a
business license tax upon apart-
ment buildings.

OPINION NO. 142

June 19, 1972

Honorable Joe F. Rains
Representative, District 115
700 East 10th
Sedalia, Missouri 65301



Dear Representative Rains:

This opinion is in response to your request in which you ask
the following:

"Whether a third class city under Chapter 77,
RSMo, may levy a business license tax upon
apartment building and determine the rate of
tax by the number of apartment units."

Your request presents two questions, first, whether a third
class city organized under Chapter 77, RSMo, may levy a business
license tax upon apartment buildings, and secondly, whether this
tax may be determined by the number of apartment units. Since the
answer to the first question is no, it will not be necessary to
deal with the second question.

Section 71.610, RSMo 1969, provides that:

"No municipal corporation in this state shall
have the power to impose a license tax upon
any business avocation, pursuit or calling,
unless such business avocation, pursuit or
calling is specially named as taxable in the
charter of such municipal corporation, or
unless such power be conferred by statute."

A municipal corporation then has no authority to impose a li-
cense tax upon any business or pursuit unless such power is con-
ferred by statute. Airway Drive-In Theatre Co. v. City of St. Ann,
354 S.W.2d 858 (Mo. banc 1962). Further, a municipality has no
inherent power to tax, such power rests in the state primarily and
may be conferred on a municipality by the Constitution or by stat-
ute. City of Bolivar v. Ozark Utilities Co., 191 S.W.2d 368 (Spr.
Ct.App. 1945).

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Section 94.110, RSMo 1969, controls the power of a third class city to levy license taxes on various businesses. This statute provides the third class city with the power and authority to levy and collect certain taxes. The subjects of the tax are specifically enumerated in the statute which is hereinafter set out so as to illustrate the specific nature of the statute. Section 94.110 is as follows:

"The council shall have power and authority to levy and collect a license tax on wholesale houses, auctioneers, architects, druggists, grocers, banks, brokers, wholesale merchants, merchants of all kinds, confectioners, delivery trucks, ice trucks, transfer trucks, laundry wagons, milk wagons, merchant delivery companies, cigar and tobacco stands, hay scales, wood dealers, coal dealers, lumber dealers, real estate agents, loan companies, abstractors, abstract agencies, loan agents, collection agencies, undertakers, public buildings, office buildings, public halls, public grounds, concerts, photographers in office or upon the streets, canvassers, artists, drummers, patent right dealers, automobile agents and dealers, automobile accessory dealers, insurance companies, insurance agents, taverns, hotels, rooming houses, boardinghouses, health schools, telephone companies, street contractors, paper hanger contractors, painting contractors, plastering contractors, and all subcontractors, flour mills, express company agencies, wagons, buggies, carriages, tanners, barbers, barber-shops, hair dressers, hair dressing shops, whether conducted in connection with other business or separate beauty parlors, tailors, florists, nursery stock agents, bookbinders, monument dealers and agencies, manufacturing agents, shoe cobbler shops, storage warehouses, shoe shining parlors, newspaper offices, job printing plants, ready-to-wear clothing agencies, tailor-made clothing agencies, sewing machine agents, piano and organ dealers and agents, foreign coffee and tea dealers and agents, and all other vocations whatsoever, and fix the rate of carriage of persons and wagonage, drayage and cartage of property; and to levy and collect a license tax and regulate hawkers, peddlers, pawn-brokers, restaurants, butchers, wholesale butchers, bathhouses and masseurs, lunch stands, lunch

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counters, lunch wagons, soft drink and ice cream stand and vendors, ice cream parlors, peanut and popcorn stands, and stands of every kind, hucksters, opera houses, moving picture shows, private parks, public lectures, public meetings, baseball parks, outdoor advertising, horse and cattle dealers, stockyards, wagon yards, auto yards, oil stations, wholesale and retail, inspectors, gaugers, mercantile agents, manufacturing and other corporations, or institutions, machine shops, blacksmith shops, foundries, sewer contractors, building contractors, stone contractors, plumbing contractors, brick contractors, cement contractors, sidewalk contractors, bridge contractors, and all subcontractors, street railroad cars, light, power and water companies, gas companies, laundries, laundry agencies, ice plants and ice plant agencies, ice dealers, omnibuses, automobiles, automobile trailers, tractors, carts, drays, milk wagons, laundry wagons, delivery wagons, transfer and job wagons, ice wagons, and all other vehicles, traveling and auction stores, plumbers, pressing establishments, installment houses and agencies, produce and poultry dealers, feather renovators, bakers and bakeries, bakery delivery wagons, and delivery autos, bottling works, dye works, clearing establishments, sand plants, steam fitters, corn doctors, chiropodists, hackmen, taxicabs, buses, draymen, omnibus drivers, porters, ferries, and to regulate the same, and the landing thereof, within the limits of the city, and all others pursuing like occupations; and to levy and collect a license tax, regulate, restrain, prohibit and suppress ordinaries, money brokers, money changers, intelligence and employment offices and agencies, public masquerades, balls, street exhibitions, dance halls, fortune tellers, pistol galleries, shooting galleries, palmists, private venereal hospitals, museums, menageries, equestrian performances, flourosopic views, picture shows, telescopic views, lung testers, muscle developers, magnifying glasses, ten pin alleys, ball alleys, bowling alleys, billiard tables, pool and other tables, miniature golf courses, theatrical or other exhibitions, boxing and sparring exhibitions, shows and amusements, amusement parks, and the sale of unclaimed goods

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by express companies or common carriers, auto wrecking shops, bill posters, junk dealers, porters, carnival and street fairs, circuses and shows, for parade and exhibition, or both, skating rinks, and runners and solicitors for steamboats, cars, stages, taxicabs, hotels, rooming houses, boardinghouses, bathhouses, masseurs, health schools, and all other vocations and business whatsoever, and all other pursuing like occupations."

This specific enumeration does not list apartment buildings.

In interpreting this statute it must be remembered that a fundamental rule in the construction of statutes is embodied in the maxim, "expressio unius est exclusio alterius," which means that the express mention of one thing, person or place implies the exclusion of another. City of Hannibal v. Minor, 224 S.W.2d 598 (St.L.Ct.App. 1949). Statutes and ordinances imposing licenses and business taxes are to be construed liberally in favor of the citizen and strictly against the authority attempting to tax. City of Odessa v. Borgic, 456 S.W.2d 611 (K.C.Ct.App. 1970). Since the municipality has no inherent power to tax any doubt as to the delegation to or existence of such power in the city, must be resolved against the city. The City of St. Charles v. St. Charles Gas Company, 185 S.W.2d 797 (Mo. 1945).

In Section 94.110 only the words "hotels, rooming houses, boardinghouses" are even vaguely related to apartment buildings. No cases could be found which defined apartment buildings, hotels, rooming houses, or boardinghouses to be synonymous. Black's Law Dictionary defines an apartment house as, a building arranged in several suites of connecting rooms, each suite designed for independent housekeeping. An apartment building has been held to be unlike a hotel in that an apartment building is used as a dwelling for several families living separately, while a hotel is a building held out to the public as a place where all transients will be entertained as guests for compensation. Satterthwait v. Gibbs, 135 A. 862 (Pa. 1927). Further a hotel has been defined by Black's Law Dictionary as an inn, a public house or tavern which is open to the traveling public, who remain there as guests for compensation, furnished with food, drink, lodging, etc. An extensive definition of hotel along these lines is provided by the case of Juengel v. City of Glendale, 164 S.W.2d 610 (St.L.Ct.App. 1942). According to Black's Law Dictionary, a boarder is one who makes a special contract for food with or without lodging, therefore a boardinghouse is defined as a house where boarders are kept. Further a boardinghouse can be compared to an inn or restaurant. The St. Louis Court of Appeals has accepted the definition of a boarder as one to whom

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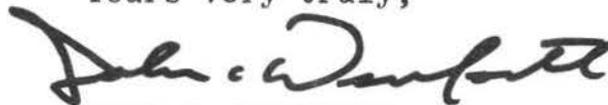
meals are supplied with or without rooms. Jackson v. Engert, 453 S.W.2d 615 (St.L.Ct.App. 1970). Finally, Black's Law Dictionary defines a roomer as one who rents a room or rooms in a house, therefore a rooming house would be a house providing lodging for roomers. That is, a rooming house is merely a house or building where one or more bedrooms which the proprietor can spare for the purpose of lodgings are made available to such persons as he chooses. However, the rooming house is not open to the public for lodging on demand. A rooming house differs from a boardinghouse in that a rooming house does not serve meals. City of Independence v. Richardson, 232 P. 1044 (Kans. 1925). From these definitions it is apparent that apartment buildings are not included in this specific list of businesses which a third class city can levy license taxes upon. Therefore, we must hold that the city does not have the power to levy a business license tax on apartment buildings.

CONCLUSION

It is the opinion of this office that a third class city cannot levy a business license tax upon apartment buildings.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Preston Dean.

Yours very truly,



JOHN C. DANFORTH
Attorney General