

COOPERATIVE AGREEMENTS:
MOTOR VEHICLES:
LICENSES:
FEE AGENTS:

The county and city governments of the State of Missouri cannot be appointed by the Director of Revenue as Department of Revenue fee office agents to perform those

duties set out in Section 136.055, RSMo 1969, because said duties are not within the scope of the powers of city or county governments in this state.

OPINION NO. 77

February 21, 1973

Mr. James R. Spradling
Director, Department of Revenue
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Mr. Spradling:

This official opinion is in response to your request for an opinion from the Office of the Attorney General concerning the following question:

"Can the county or city governments of Missouri act as fee agents for the State of Missouri for the sale of motor vehicle licenses, and the collection of motor vehicle sales and use tax?"

The Legislature for the State of Missouri has authorized the state Director of Revenue to appoint agents whose duties include the sale of motor vehicle licenses and the collection of motor vehicle sales and use taxes. The pertinent statute in this regard is Section 136.055, RSMo 1969, which follows:

"1. Any person who is selected or appointed by the state director of revenue to act as an agent of the department of revenue, whose duties shall be the sale of motor vehicle licenses and the collection of motor vehicle sales and use taxes under the provisions of section 144.440, RSMo, and who receives no salary from the department of revenue shall be authorized to collect from the party requiring such services additional fees as compensation in full for all services rendered on the following basis:

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(1) For each motor vehicle or trailer license sold, renewed or transferred--forty cents;

(2) For each application or transfer of title--forty cents;

(3) For each chauffeur's, operator's or driver's license--forty cents;

(4) No notary fee or other fee or additional charge shall be paid or collected.

"2. This section shall not apply to agents appointed by the state director of revenue in any city where the department of revenue maintains an office."

Although the statute authorizes the Director of Revenue to appoint "any person", the authority to appoint a city or county as agent to perform such functions is not prohibited by the use of the term "person". Section 1.020(7) provides that "[t]he word 'person' may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations." A "body politic" has been defined as ". . . a social compact by which the whole people covenant with each other, and each citizen with the whole people, that all shall be governed by certain laws for the common good." Munn v. Illinois, 94 U.S. 113, 124, 24 L.Ed. 77, (1876). The term "bodies politic and corporate" has been found applicable to both counties and municipalities. Spencer v. Sully County, 33 N.W. 97, 4 Dak. 474 (1887); Uricich v. Kolesar, 5 N.E.2d 335, 337, 132 Ohio St. 115 (1936); Middle States Utilities Co. v. City of Osceola, 1 N.W.2d 643, 645, 231 Iowa 462 (1942); and City of Bowling Green v. Bd. of Ed. of Bowling Green Ind. School Dist., 443 S.W.2d 243, 245 (Ky. 1969). Therefore, by substitution, Section 136.055 can be read as follows:

"Any [body politic and corporate, to include any city or county of the State of Missouri, partnership, or other unincorporated association] who is selected or appointed by the state director of revenue to act as an agent of the department of revenue, . . ."

Therefore, there is nothing in Section 136.055 which would preclude the Director of the Department of Revenue from appointing cities or counties as Department of Revenue fee office agents. However, it must be determined whether, upon the appointment of

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a city or a county as a Department of Revenue fee office agent, such political entity would have the authority to perform the duties of "the sale of motor vehicle licenses and the collection of motor vehicle sales and use taxes. . . ."

Political subdivisions of the State of Missouri have been given the statutory authority to enter into contracts with other public bodies, usually designated as cooperative agreements, whereby services common to both contracting entities may be performed by one such entity. Section 70.220, RSMo 1969, is the statute granting such authority and provides that:

"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides." (Emphasis added)

The term "political subdivision" as defined by Section 70.210(2) includes "counties, townships, cities, towns. . . ." Please note that the legislature has expressly granted political subdivisions the authority to enter into cooperative agreements with agencies of the State of Missouri. This would authorize cities and counties to contract with the Department of Revenue to perform fee agent services

". . . provided, that the subject and purposes of any such contract or cooperative

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action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. . . ."

Counties, cities and public officials derive their authority from the state and have only such authority as expressly given them by law and that which is necessarily implied in order to execute that which is expressly given. Lancaster v. Atchison County, 352 Mo. 1039, 180 S.W.2d 706 (Banc 1944). We have concluded that the performance of the duties of Department of Revenue fee office agents cannot be accomplished under present statutory law, by political subdivisions, because certain of those duties are without the scope of the powers of either cities or counties of this state. The power to issue driver's and chauffeur's licenses is nowhere conferred upon either counties or municipalities by the statutes of this state. Additionally, the power to do so cannot be reasonably implied from the various expressly enumerated powers of counties and municipalities. Presently, Department of Revenue fee office agents have the duty, by reason of Section 136.055, to collect motor vehicle sales and use taxes. This duty is not within the scope of the powers of any political subdivision of this state. Counties, no matter what their class, are given no express power to tax the sale or use of motor vehicles. Cities with a population of at least five hundred, on the other hand, do have the authority to impose sales taxes, with the approval of a majority of the voters of such cities, upon the purchase of, among other things, motor vehicles. Section 94.510, RSMo 1969. However, Section 94.560 expressly precludes a city from actually collecting the sales tax imposed upon motor vehicles. That statute provides as follows:

"City sales taxes imposed pursuant to sections 94.500 to 94.570 on the purchase and sale of motor vehicles shall not be collected and remitted by the seller, but shall be collected by the director of revenue at the time application is made for a certificate of title, if the address of the applicant is within a city imposing a city sales tax. The amounts so collected shall be deposited in the city sales tax trust fund to the credit of the proper cities less the two percent collection cost."

Although there is nothing in Section 136.055, authorizing the Director of Revenue to appoint fee office agents, which would preclude the Director from appointing political subdivisions as agents, the cities and counties of this state can perform a service in common with another public body only via the execution

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of a cooperative agreement pursuant to Section 70.220, and may only enter into such an agreement where the service to be performed is otherwise within the scope of the powers of the contracting political subdivisions. In that certain of the duties presently performed by the Department of Revenue fee office agencies are not expressly or impliedly within the power of political subdivisions, we must conclude that neither municipalities nor counties can be appointed as Department of Revenue fee office agents under the present statutes of this state.

CONCLUSION

Therefore, it is the opinion of this office that the county and city governments of the State of Missouri cannot be appointed by the Director of Revenue as Department of Revenue fee office agents to perform those duties set out in Section 136.055, RSMo 1969, because said duties are not within the scope of the powers of city or county governments in this state.

This opinion, which I hereby approve, was prepared by my assistant Michael L. Boicourt.

Very truly yours,



JOHN C. DANFORTH
Attorney General