



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

March 27, 1973

OPINION LETTER NO. 103

Honorable Edna Eads
State Representative, District 128
Room 203 State Capitol Building
Jefferson City, Missouri 65101

Dear Mrs. Eads:

This letter is in response to your request for an opinion on the following question:

"Can a city administration temporarily suspend a city sales tax without complete abolition?"

The letters attached to your opinion request state that the administration of the City of Flat River does not desire to abolish its city sales tax entirely, but that some citizens of that city have proposed that the tax be suspended temporarily until such time as other cities in the area may decide to enact similar taxes.

In our Opinion No. 39, January 3, 1973, issued to the Honorable Edna Eads, a copy of which is attached hereto, we held that the governing body of a city may abolish a city sales tax previously imposed as provided in Sections 94.500 to 94.570, RSMo 1969, by repealing the ordinance imposing the tax, without a subsequent vote of the qualified electors on the question of abolition. The issue herein is whether such a procedure can also suffice to effect a temporary suspension of such a city sales tax.

The first issue posed by your question is whether a municipal ordinance may be suspended for a limited period of time by any means. No provision of the Revised Statutes of Missouri explicitly permits the temporary suspension of municipal ordinances.

Honorable Edna Eads

However, "[t]he view has been taken that the temporary suspension of operation of an ordinance may be effected by the enactment of another ordinance providing for such suspension." 56 Am.Jur.2d, Municipal Corporations, §409, p. 451. We conclude initially, then, that it is possible for a city sales tax ordinance to be suspended temporarily without complete abolition.

The second issue implicit in your question is the manner in which such a suspension of the city sales tax ordinance may be accomplished. It has been stated that:

"The operation of an ordinance may for a time be suspended by another ordinance, but it cannot be suspended by a mere resolution or by an act of the council of less dignity than the ordinance itself. Thus, the council has no authority to set aside or disregard a duly enacted ordinance except in some manner prescribed by law. Likewise, the mayor or any other municipal officer or board has no power to suspend the operation of an ordinance which contains no provision authorizing them to do so." 62 C.J.S., Municipal Corporations, §439, at p. 840.

In the case of In re Condemnation of Property for Park in City of St. Joseph, 263 S.W. 97 (Mo. banc 1924), the court said, l.c. 102:

". . . Having been enacted and approved, it [an ordinance passed by referendum] is nevertheless equally subject to the legislative will as to amendment or repeal as though it had not been referred. . . ." (Emphasis added)

The temporary suspension of an ordinance, if limited in duration to a specified period of time, is a form of amendment of that ordinance. We conclude that this type of limited temporary suspension of a city sales tax may be effected by the governing body of a city which has enacted such a tax.

However, an indefinite suspension lacking a date of automatic termination, or requiring further legislative action to reinstate the operation of the ordinance, is the equivalent of the repeal of the ordinance. But, while the governing body of a city may repeal a city sales tax ordinance without a vote of the people, it clearly cannot enact a city sales tax ordinance in any manner other than that set forth in Section 94.510.1, RSMo 1969, providing for approval by the qualified voters of the city before a city sales tax can be levied.

Honorable Edna Eads

We conclude that the reenactment of a city sales tax ordinance, after it has once been repealed, requires another vote of the people as contemplated by Section 94.510.1. Upon repeal, the initial ordinance and the people's approval of it become a nullity. To permit the governing body of a city to achieve by an indefinite ordinance of suspension, followed by some subsequent and independently determined lifting of that suspension, what it could not do by separate ordinances of repeal and reenactment, would vitiate the requirement of a referendum in Section 94.510.1. We conclude that a city sales tax ordinance can only be suspended by an ordinance which limits the term of the suspension to a specified duration and automatically reinstates the tax at the expiration of that period.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 39
1/3/73, Eads