

POLL TAX; City of Third Class has right to impose.

January 6, 1941



Mr. Tip Thacker
Poplar Bluff
Missouri

Dear Sir:

We are in receipt of your letter of January 1st wherein you state as follows:

"I would like to know if the City of Poplar Bluff has the authority to collect Poll tax.

"I understand that the Supreme Court of Missouri made a ruling on this several years ago and would appreciate your informing me of this ruling."

The official 1930 Census shows Poplar Bluff, Missouri, to have a population of 7,551, and inasmuch as Section 6092, R. S. Mo. 1929, provides that cities and towns containing three thousand and less than thirty thousand inhabitants may elect to become cities of the third class, we presume that Poplar Bluff comes within the latter category.

Section 6787, R. S. Mo. 1929, provides for the imposition of a poll tax by cities of the third class as follows:

"The city council shall have power to levy, annually, a poll tax, not exceeding two dollars, upon each able-bodied male citizen between

the ages of twenty-one and fifty years, who shall have been a resident of the city for thirty days next preceding the levy of said poll tax, and said poll tax shall be collected by the collector as personal taxes are collected."

In the case of *Kansas City v. Whipple*, 136 Mo. 475, 38 S. W. 295, 35 L. R. A. 747, the Supreme Court, en banc, held a charter provision of Kansas City provided for the levy of a poll tax for sanitary purposes in the years of a general election on every male resident of legal age, unconstitutional, for the reason that it exempted certain persons voting at the election and therefore discriminated between subjects of legislation in the same class.

The charter provision (Section 39, Article 17) provided that:

"Every male person over the age of twenty-one years who shall be a resident of Kansas City shall be assessed for each year in which a general election is held a poll tax of two dollars and fifty cents, which shall be collected and paid in the same manner as any other personal tax; provided, however, that if the person so assessed shall vote at the general city election held in the year for which such tax is levied, and shall receive a certificate from the recorder of voters that he has voted at such election, or shall otherwise establish in such manner as may be provided by ordinance that he has so voted, such certificate or proof shall operate to extinguish such tax for such year; but a failure to pay such tax shall not disqualify any person from voting. The first assessment of such poll tax shall be made for the year 1890.

All moneys collected under this section shall be used for sanitary purposes."

The court said (l. c. 479 (Mo.)):

"Taxes of this character in one form or another have been imposed by statute ever since the organization of the state government, as well as before. 1 Terr. Laws. pp. 34 and 37, secs. 1 and 9; 2 Laws of Mo. 1825, p. 663, sec. 1; R. S. 1835, p. 529, secs. 1 and 3; R. S. 1845, pp. 927 and 928, secs. 1 and 3; R. S. 1855, pp. 1322 and 1324, secs. 1 and 5; G. S. 1865, pp. 95 and 96, secs. 1 and 7; R. S. 1879, secs. 6944, 6945, 6947; R. S. 1889, sec. 7809 et seq. These taxes have always been imposed on a certain class only of the citizens of the state, and it may further be conceded that the constitutional requirement of uniformity is satisfied whenever all citizens of the same class are taxed alike. *St. Louis v. Bowler*, 94 Mo. 630.

"Applying these principles to the charter provision in question it must also be conceded that, if section 39 was stripped of its proviso, it would be a legitimate expression of the taxing power of the city, whereby an equal tax is levied upon all citizens of a certain natural and well defined class. This uniformity is, however, at once destroyed by the proviso which, in effect, exempts from the payment of such tax every registered voter of that class who has voted at the general city election in the year in which the tax is levied, thus discriminating between the subjects of taxation in the same class in violation of the constitutional provision quoted. *St. Louis v. Spiegel*, 75 Mo. 145."

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Section 6787, supra, is uniform upon the same class of subjects within the territorial limits of the authority levying the tax and is therefore not subject to the criticism outlined in the Whipple Case, supra.

We should point out that at the 1937 Session of the Legislature, Laws of Missouri, 1937, page 440, the following bill was passed:

"That Sections 7879, 7880, 7881, 7882, 7883, 7884, 7885, 7886, 7887, and 7888 of Article Three (3), Chapter Forty-two (42) of the Revised Statutes of the State of Missouri for the year 1929 and Sections 8157, 8158, 8159 and 8160 of Article Fifteen (15), Chapter Forty-two (42) of the Revised Statutes of the State of Missouri for the year 1929, be and the same is hereby repealed."

In an opinion under date of March 25, 1938, to Mr. Charles F. Elmore, Salisbury, Missouri, a copy of which we are enclosing, we pointed out that the above act repealed all of the statutes providing for the levying and collection of poll taxes by counties in this state, with the exception of those poll taxes which cities and villages are authorized to collect.

Section 6787, supra, provides a complete scheme for the levying and collection of poll taxes by the city of Poplar Bluff and is in no way dependent for its efficacy upon the statutes repealed by the Legislature at the 1937 Session.

From the foregoing, we are of the opinion that Poplar Bluff, Missouri, has the authority to collect a poll tax.

Respectfully submitted,

APPROVED:

MAX WASSERMAN
Assistant Attorney-General

COVELL R. HEWITT
(Acting) Attorney-General