

MUNICIPALITIES: May impose license tax on resident operators of motor vehicles or operators doing business within the city.

May 8, 1943

5/13

FILED  
54

Mr. Edward V. Long  
Attorney at Law  
Blair Building  
Bowling Green, Missouri

Dear Sir:

We are in receipt of your opinion request under date of April 13, 1943. Said request reads in part:

"Please get me an opinion as to whether or not a City of the 4th Class like Bowling Green can collect city automobile licenses from a P.S.C. Carrier like Robertson Motor Freight Service whose home terminal is located here."

Your problem seems to come within the scope of Section 7196, R. S. Missouri 1939. Said section applies to cities of the fourth class and enumerates many things and activities upon which the mayor and board of aldermen have power and authority to regulate and license. Said section, in its applicable parts reads:

"The mayor and board of aldermen shall have power and authority to regulate and to license and to levy and collect a license tax, express companies \* \* \*  
\* \* \* \* \*  
carts, drays, transfer and job wagons,  
\* \* \* \* \* and all other vehicles, \* \* \*  
\* \* \* \* \* to license, tax and regulate hackmen, draymen, omnibus drivers, porters and all others pursuing like occupations, with or without vehicles, and to prescribe their compensation; \* \* \* \* \*"

While there is no express mention in said statute of motor freight service, under the rule of ejusdem generis the Robertson Motor Freight Service undoubtedly comes within the scope of said section. The rule of ejusdem generis is applied in the case of *Wonner v. Carterville*, 125 S. W. 861, there the court explained the rule as being that where general words followed particular words in the statute the rule will be applicable to those of the same general character or class in order to effectuate the legislative intent. Under this theory the Robertson Motor Freight Service certainly comes within the statute.

A city's authority to tax has been held to be confined to statutory or constitutional power. In the case of *Siemens v. Shreeve*, 296 S. W. 415, 1. c. 416, in discussing license tax of this nature the court said:

"It is conceded that the license tax here sought to be imposed is an attempted exercise of the taxing power, and not a police regulation. A city has no inherent power to tax. This power rests primarily in the state and may be delegated by constitutional provision or by statutory enactment. The authority to tax must be expressly granted or necessarily incident to the powers conferred, and in case of doubt the power is denied. \* \* \* \* \*"

The authority necessary for Bowling Green, Missouri, to impose this city automobile license is found in Section 7196, R. S. Missouri 1939.

Ordinances of this nature have been held to be a revenue measure, not a police measure. In *City of Lebanon v. Joslyn*, 58 S. W. (2d) 289, 1. c. 290, the court in discussing a license tax in the nature of which you write, said:

"\* \* \* \* \*we may say that the ordinance of the city of Lebanon is not a police regulation. It is purely a revenue measure. The city of Lebanon is a city of the fourth class. \* \* \* \* \*"

There are numerous cases that hold where non-residents operate within the city, vehicles of various types, the city cannot

May 8, 1943

impose license tax for such activity. Prior opinions of this office are also in accord with that doctrine. In support thereof see *City of Ozark v. Hammond*, 49 S. W. (2d) 129.

Two early cases approving a license tax enacted upon vehicles by a city are the *City of St. Louis v. Greene*, 70 Missouri 562, *City of St. Louis v. Woodruff*, 71 Missouri 92. In the case of *City of St. Clair v. George*, 33 S. W. (2d) 1019, the St. Louis Court of Appeals held that the driver of a truck transporting merchandise from a grocery company to a store in another city was not subject to a license tax imposed by such city. In that case, l. c. 1021, the court said:

"We conclude that defendant in the present case was not carrying on the business of transporting merchandise within the limits of the city of St. Clair, and was not subject to the imposition of a license tax by said city."

The two tests as to whether or not one is subject to a license imposed by the city upon activities of this nature, are: (1) is the licensee a resident within the city, (2) or doing business within the city? Unless one of those two tests is satisfied the later cases seem to hold that the motor vehicle used in the activity is not subject to license.

In your question you state that the Robertson Motor Freight Service's home terminal is located in Bowling Green, Missouri. This office believes that such fact, if it does exist, is sufficient to establish the residence of the Robertson Motor Freight Service Company as being in the City of Bowling Green, Missouri, and therefore subject to a license tax enacted by the city, under the authority conferred upon said city by Section 7196, supra.

#### CONCLUSION

The City of Bowling Green can collect city automobile licenses from a common carrier whose residence (home terminal) is within the corporate limits of said city or from a common carrier doing business within the corporate limits.

Respectfully submitted

APPROVED:

WILLIAM C. BLAIR  
Assistant Attorney General

ROY McRITTRICK  
Attorney General of Missouri