

TAXATION AND REVENUE: Definition of term "other political sub-
division" as used in subsection 10, Section
39, Article III, Constitution of 1945.

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August 9, 1946

Mr. G. H. Bates
State Collector of Revenue
Jefferson City, Missouri

Memo

Dear Sir:

Reference is made to your letter of recent date, re-
questing an official opinion of this office, and reading as
follows:

"Under paragraph 10 of Section 39 of Arti-
cle 3 of the Constitution, the General As-
sembly has no power

'To impose a use or sales tax upon
the use, purchase, or acquisition of
property paid for out of the funds
of any county or political subdivi-
sion.'

"In the administration of the sales tax act,
the question of what is a political subdivi-
sion has arisen. In connection with the
question on whether or not a city is a po-
litical subdivision of the state, may I re-
fer you to the case of Kansas City v. Neal,
122 Mo. 232, 254, in which Division Two of
the Missouri Supreme Court said:

'That Kansas City is not a political
subdivision of the state, within the
meaning of the constitution is equally
clear. Subdivision means to divide
into smaller parts the same thing or
subject-matter, and no city or town in
this state is a subdivision thereof ex-
cept the city of St. Louis, and it be-

came so under sections 20, 22 and 23, article 9, state constitution, and by an act of the legislature in pursuance thereof setting off certain defined boundaries defining the city limits, and conferring upon the city all the rights and privileges possessed by a county.' Cited in Associated Holding Company v. Kelley, et al., 81 S.W. (2d) 64 (3).

"Following the authority of the Neal Case, Supra, this Department has taken the position that the only city in the state which would be entitled to the provisions of the constitutional provision above, is the City of St. Louis. It appears that this will be contested by other cities and it is for that reason that this Department would like to have an official opinion from your Department on the question. We would also appreciate if you would include in your opinion any and all political subdivisions which you think would come under the aforesaid constitutional provision."

The proper construction to be placed upon subsection 10 of Section 39, Article III, of the Constitution of 1945 will be dependent upon the precise meaning to be attributed to the term "other political subdivision" as used therein. As used in the constitutional provision, the term has not been the subject of judicial construction by any of the appellate courts of this state, so we must necessarily arrive at such definition by recourse to the general rules of construction applicable to constitutional provisions.

We note in your letter a reference to a certain opinion of the Supreme Court of Missouri. At the outset, may we say that we are conversant with the Neal case, as well as many other opinions defining the term "political subdivision," but we defer discussion thereof to a later portion of this opinion. We do so for the reason that such definitions were expressed in the course of the construction of two separate provisions of the Constitution of 1875 and not the provision of the Constitution of 1945 now under consideration.

It is a fundamental rule of constitutional construction that the intent of the framers thereof be determined. We quote from State ex inf. v. Ellis, 28 S. W. (2d) 363:

" * * * There is another rule superior to that, which is that the intention of the lawmakers and Constitution makers must be gathered when interpreting an act or a constitutional provision. * * *"

To ascertain such intent, it is proper in certain instances that regard be given to the debates of the Constitutional Convention framing the organic law, to the end that the sense of that body with respect to the particular provision may be discovered. We recognize the rule that such debates are of comparatively limited value, as has been declared by the Supreme Court in *State ex rel. v. Osburn*, 147 S. W. (2d) 1065, wherein the court said:

"In the debates before the Constitutional Convention of 1875 which proposed Section 3, it seems to have been agreed that upon aggregating the votes from the face of the returns the candidate with the highest vote would prima facie be entitled to the office and to enter upon his duties. Any attack upon the returns would have to be made thereafter by a contest before the general assembly. See *Debates of the Missouri Constitutional Convention of 1875* by Loeb and Shoemaker, Vol. IV, p. 428, et seq. We refer to the debates with knowledge of the rule which limits the reliance which may be placed in them. *State ex rel. Heimberger v. Board of Curators*, 268 Mo. 598, 188 S. W. 128."

You will note that even in this case, where the rule of limited reliance upon the Constitutional Convention debates is declared, the court did in fact actually use the record of the proceedings to ascertain the true intent of the provision then under consideration. As declaratory of the rule that it is proper to examine such record, to the end that the true meaning of a provision may be determined, we direct your attention to *Ex Parte Oppenstein*, 233 S. W. 440, wherein the Supreme Court, in Banc, said:

"The constitutional convention, after having put section 3 of article 3 in the form in which it now stands, had before it the question of striking out that section and adopting the following:

"All elections by the people shall be by ballot, but all ballots shall be subject to inspection and examination, in all cases of contested elections and judicial proceedings, under such proceedings, regulations and safeguards as may be provided by law."

"This substitute was rejected by a vote of 42 to 23. Three members were absent. The power to inspect and examine the ballots in 'judicial proceedings' would have been given by this amendment. The convention rejected it.

"It is clear from this that the constitutional convention had before it, in the proposed substitute section, the very question which counsel discuss. This substitute would have expressly given the authority now sought to be exerted. When the convention defeated it, it passed upon the question in this case. Its intent could hardly have been more clearly exhibited than by the vote upon the substitute section."

To the same effect is the following from the opinion in *State ex inf. v. Ellis*; cited supra:

"The debate in the Constitutional Convention which put forward section 13 as an amendment to the Constitution shows that it was intended to be self-enforcing. It was assumed that no legislative act would be necessary to put it into effect. One reason why it is self-executing is because some of the very state officials affected by it should not be depended upon to put it into force. It was intended, as quoted from *Corpus Juris* above, to put it 'beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect.' That was clear in the debates."

Judicial recognition of this practice has been affirmatively had in as recent a case as *State ex rel. v. Nordberg*, 193 S. W. (2d) 10 (not yet printed in State Reports).

Another fundamental rule of the construction of Constitutions is that the intent and meaning of a constitutional provision must be determined by reference to the instrument as a whole. We quote from State v. Adkins, 284 Mo. 680:

" * * * It is a fundamental rule of construction of all writings, whether they be laws, wills, deeds, contracts or constitutions, that they must be construed as a whole, and not in detached fragments; that they must be construed to effectuate and not to destroy their plain intent and purpose, and that in determining what is that intent and purpose all provisions relating either generally or specially to a particular topic are to be scrutinized and so interpreted, if possible, as to effectuate the intention of the makers. This rule does not need (though it does not lack) authority to give it vitality. It is inherent in the very nature of things, and springs from reason as Minerva sprang from the brain of Jove, full-grown and ready for battle.

"Concerning the construction of constitutions it has been well said that:

"'Constitutions are not designed for metaphysical or logical subtleties, for niceties of expression, or for the exercise of philosophical acuteness or judicial research. They are instruments of a practical nature founded on the common business of life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them, the people adopt them, the people must be supposed to read them, with the help of common-sense, and cannot be presumed to admit in them any recondite meaning or any extraordinary gloss.' (1 Story, Constitution, sec. 451.)

* * * * *

"It has been well said by a high authority that:

"The true rule of construction is not to

consider one provision of the Constitution alone, but to contemplate all, and therefore to limit one conceded attribute by those qualifications which naturally result from other powers granted by that instrument, so that the whole may be interpreted by the spirit which vivifies, and not by the letter which killeth."
(Emphasis ours.)

That where necessary to effectuate the true meaning of a constitutional provision, the literal meaning of the words used must give way to such true intent as ascertained from consideration of all of the parts of the instrument, has been reaffirmed in *State ex rel. v. Hackmann*, 229 S. W. 1078, from which we quote:

"There are certain well-understood rules laid down by the courts for the construction of constitutional provisions, and they are the same as those governing legislative enactments. It was said in *State ex rel. v. McGowan*, 138 Mo. loc. cit. 192, 39 S. W. 771, in discussing the general rules of construction of constitutional provisions that--

"The organic law is subject to the same general rules of construction as other laws, due regard being had to the broader objects and scope of the former, as a charter of popular government. The intent of such an instrument is the prime object to be attained in construing it."

"In 12 *Corpus Juris*, 700, it is said:

"The court, therefore, should constantly keep in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied."

"And also in 12 *Corpus Juris*, 702, it is said:

"If a literal interpretation of the language used in a constitutional provision would give it an effect in contravention of the real purpose and intent of the instrument as deduced

from a consideration of all its parts, such intent must prevail over the literal meaning."

With these fundamental rules of construction in mind, we advert to a consideration of the constitutional provision of which the term "other political subdivision" forms a part, together with such other related provisions as may be of value in determining the true meaning of the one under consideration.

An examination of the transcript of the debates of the Constitutional Convention which framed the Constitution of 1945 discloses that the provision which now appears as subsection 10 of Section 59, Article III, formed a part of file 19 relating to taxation. The proposal came before the Convention on the 194th day, at which time the section became the subject of debate as to its meaning and effect. The following quotations from the transcript of the debates, found on page 6165, et seq., disclose these statements having been made:

"MR. LIND: Mr. President, this amendment, in the nature of adding a new section to this file, appears on page eight of the journal of August 16th and I'll save time by reading it. "The General Assembly shall have no power to impose a use or sales tax upon the use, purchase or other acquisition of property, by municipalities, counties, school districts or other political subdivision of the state."

"I apologize both to the committee and to this Convention for the late hour of presentation of this purely corrective amendment which I believe will carry out the thought of the committee expressed in section 6 of the file. If you will turn to section 6 you'll find that the committee recommended as follows: 'All property, real and personal, of the state, municipalities, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation;'

"It was our thought at that time that we were exempting city property or whatever character, school district property and county property

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from the advocacy of any state tax. It has been the policy of this state since its inception not to tax property of cities, municipalities and school districts. Although this file was in the hands of the cities for many months it was only day before yesterday that our attention was called to the fact that under the present statutes in Missouri this sales tax in this state was being applied to those articles purchased by school districts, cities and counties. I am advised in Kansas City it amounts to some where in the neighborhood of thirty-five thousand dollars a year and I imagine it is larger in St. Louis. Now, since this is strictly within the theory advanced by section 6 heretofore approved by this Convention and the amendment speaks for itself, I am merely going to ask that the amendment be adopted.

"ACTING CHAIRMAN: Mr. Allen, this is proposed as a new section?"

"MR. ALLEN: Yes. The reason I, Mr. Heege, Judge Hughes and I put it in this form, we believed that it should probably be placed by the phraseology and arrangement committee, probably back in section 6 some where and probably be rephrased so as to conform to the language of section 6 because it all covers the same subject matter and that is the reason we put it in the form of a new section instead of adding it on to either section 12 or 13 or some that we have not yet considered because at the time section 6 was considered this matter had not been called to our attention. I move its adoption.

* * * * *

"MR. COLLIER: Will it relieve the state penitentiary and other penal institutions?"

"MR. ALLEN: This section will not. It refers only to municipalities, counties, school districts or other political subdivisions. I don't know that the penitentiary would fall in any of those.

"MR. COLEMAN: How about the eleemosynary institutions of the state?"

"MR. ALLEN: Judge, if they are a political subdivision they are exempted under this. If they are either municipalities, counties or other political subdivisions they are; if they are not then it doesn't affect them one way or the other.

"MR. COLEMAN: What I was trying to get at was your intent. Do you just want to leave that open for judicial interpretation as to whether or not they fall within the meaning of the words they used?"

"MR. ALLEN: I was only interested in cities, counties and school districts.

* * * * *

"MR. PHILLIPS (OF JACKSON): Mr. Shepley, this proposal of Mr. Allens is much more comprehensive than just exempting municipalities, is it not?"

"MR. SHEPLEY: Yes, it would exempt, Mr. Phillips, municipalities, counties, school districts, road districts, sewer districts, drainage districts and if the Convention adopts a proposal that I am going to submit shortly which I gave you a copy of, define what we mean by political subdivisions in article ten, it would include any other authority of government having the power to levy taxes.

* * * * *

"MR. MAYER: Well, of course the General Assembly hasn't been willing to go that far and perhaps that is the reason Mr. Allen is putting it in. We have a provision here that the state may not levy any tax against any municipality or under the property of a municipality. Now, that is in your file. Yet we permit the state, under the construction that has been put on this sales tax law, to levy a tax against the cities because that is what it is when we make the cities pay a sales tax. Now,

if it is good to exempt cities and all political subdivisions from taxes imposed by the Legislature except for state purposes, why shouldn't we exempt them from paying this sales tax?

* * * * *

"MR. ALLEN: Well, it's my understanding - Mr. Shepley has spoken to me, I suppose he has spoken to other members of the Committee about the introduction of an amendment to this file which would describe what is meant by 'political subdivisions' within the meaning of this article when it is finally adopted. I don't recall whether he had that definition in there or not and when that definition comes up for vote by this Convention, I assume the Convention can write into that, any description of the political subdivision which would be appropriate and the description might or might not include drainage districts and special road districts.

* * * * *

"MR. ALLEN: Mr. President, I have been amazed at the trend that the argument on this simple amendment has caused in this Convention. It is a section wholly consistent with the public policy for a hundred years. It is a policy that has been proved by this very Convention itself in section 6 of this file and that is that the state of Missouri shall not impose taxes upon these very political subdivisions that include, that are included in my amendment, to wit, municipalities, counties and other political subdivisions. I didn't include non-profit cemeteries.

"Now, Mr. President, great fears have been expressed here and considerable arguments and much reminiscences have been brought on this floor about what it will do when the only question before us is a simple question of constitutional law. As to whether or not the people of this state want to prevent their state government from imposing a tax upon their municipalities and local governments -- that is pure-

ly and simply the sole question before us. Legislatures can debate what the school funds need. We are not trying to do that here. Legislatures can debate whether or not this fund should be robbed for that fund. As I understand the duty of a constitutional convention it is to write limitations and that is solely and purely what this is -- a limitation upon the power of the Legislature. There is nothing legislative about this section. It is a limitation upon legislatures.

* * * * *

"MR. ALLEN: * * * Now, really, gentlemen, it seems to me you have one simple question here, as constitutional delegates. You either believe that the state of Missouri should impose taxes on these local political subdivisions or you believe that it should not, and if you're not going to accept this let's wipe out section 6 and turn the Legislature loose because one is not consistent with the other and I say to you that at the time we considered this matter the committee did not know that the state of Missouri was attempting to impose a sales tax on the municipalities or counties or it is my opinion the identical provision in section 6 would probably have been voted without a question when that section was adopted except it is thrown in at this late hour and I don't know whether it is the heat or the humidity but this great controversy has arisen over a principle we have already settled. I hope the amendment is adopted.

"PRESIDENT: Question is on the amendment as amended. As many as favor the amendment let it be known by saying 'Aye' ...Opposed? The Chair is in doubt. As many as favor please stand. Opposed? The amendment prevails."

Here, we think, clearly appears an expression of the intent and meaning of this constitutional provision as understood by the members of the Constitutional Convention. However, the Convention did not stop with adopting the amendment, but, for clarification purposes, and to the end that the term "other

political subdivision" might be afforded a clear and distinct definition, further proceedings were had, as disclosed by the following quotations from the transcript of the debates, appearing on pages 5190, 5191 and 5192:

"MR. SHEPLEY: I have an amendment.

"(Amendment submitted and read as follows:)

'Amendment No. 57. Amend File No. 19, page 8, by adding a new section to be designated as Section 15, and reading as follows:

'Section 15. Wherever the term "other political subdivisions" is used in this Article, it is intended to include townships, school districts, road districts, drainage districts, sewer districts, levee districts, and any other public corporation possessing the power to levy taxes.'

"MR. SHEPLEY: I move the adoption of the amendment.

"(Motion was seconded by Mr. Allen.)

"MR. SHEPLEY: * * * I don't believe -- it is certainly broad enough to cover all the various taxing authorities of the state; so far as we can ascertain it does cover the situation. We offer it to you in behalf that it will remove any doubt that would otherwise exist in this section if we did not define specifically what we mean by the word 'other political subdivisions' in article 10.

"In closing, I'll just say this. I have in my hand a list of cases which were noted by Mr. Storckman of our committee when he made the investigation of this matter and to give you briefly the reason for why we found it necessary to define political subdivisions for the purpose of article 10 I'll just give you one or two cases. 'A drainage district is not a political subdivision. In order to be such the unit must have power similar

to a county. A road district is not a political subdivision. A school district is a political subdivision. A school district is not a political subdivision. Another case, the school district is not a political subdivision; a township is a political subdivision; a sewer district and a school district is not a political subdivision.' In other words, there has been some serious doubt as to what is and what is not and certainly some of the things by the Supreme Court, things which the Supreme Court has said are not political subdivisions we want definitely to exclude them.

* * * * *

"PRESIDENT: As many as favor the amendment signify by saying 'Aye' ... Opposed? The ayes have it. The amendment is adopted."

After having adopted this definitive provision, the entire Constitution was referred to the Committee on Phraseology and Arrangement. For some reason not disclosed by the transcript of the proceedings, that committee elected to transpose the arrangement of the Constitution, so that the proposal which had originally been introduced, assigned to File 19 and adopted, and which now appears as subsection 10 of Section 39 of Article III, was placed where it is now found, but the Amendment No. 57 to File-19, which was introduced for the specific purpose of defining the term "other political subdivision" as used in the above mentioned provision, was not carried to Article III but was left in the original File 19, and is now found as Section 15 of Article X of the Constitution of 1945. Said Section 15 of Article X reads as follows:

"The term 'other political subdivision', as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax."

Here, to us, seems a situation in which the rule that the literal interpretation of the words used in a constitutional provision must not prevail over the true intent and purpose of the framers of the organic law. This seems peculiarly pertinent in the instant discussion because of the historical

affinity between the provisions which we have mentioned. To fail to read into subsection 10 of Section 39 of Article III the definition of the term "other political subdivision," which appears as Section 15 of Article X, when such definition was adopted in the circumstances detailed above, would be to defeat the very purpose of the constitutional provision.

As mentioned previously, we have given attention to the parallel lines of cases which are frequently cited as determinative of the question of whether particular governmental corporations or agencies are or are not political subdivisions. For instance, it has been held, under the provisions of Section 12, Article VI, of the Constitution of 1875, that cities, townships, school districts, levee districts, drainage districts, and such like minor subdivisions of the state, are not within the purview of the phrase "county or other political subdivisions of the state" as used in the constitutional provision. *Wilson v. King's Lake Drainage & Levee Dist.*, 139 S. W. 136, 237 Mo. 39; *Wheat v. Platte City Ben. Assessment Special Road Dist. of Platte County*, 52 S. W. (2d) 856, 330 Mo. 1245, transferred 59 S. W. (2d) 88, 227 Mo. App. 369; *Chilton v. Drainage Dist. No. 8 of Pemiscot County*, 61 S. W. (2d) 744, 332 Mo. 1173, transferred 63 S. W. (2d) 421, 228 Mo. App. 4; *Normandy Consol. School Dist. of St. Louis County v. Wellston Sewer Dist. of St. Louis County, Sup.*, 74 S. W. (2d) 621, transferred, App., 77 S. W. (2d) 477; *Bushnell v. Mississippi & Fox River Drainage Dist. of Clark County*, 102 S. W. (2d) 871, 340 Mo. 811, transferred 111 S. W. (2d) 946, 233 Mo. App. 811; *City of Parkio v. Loyd*, 78 S. W. 797, 179 Mo. 600; *City of St. Charles v. Hackman*, 34 S. W. 878, 133 Mo. 634; *Kansas City v. Neal*, 26 S. W. 695, 128 Mo. 232; *Village of Grandview, of Jackson County v. McElroy*, 298 S. W. 760, 318 Mo. 135; *Green v. Owen*, 31 S. W. (2d) 1057, 326 Mo. 450, transferred 33 S. W. (2d) 493, 225 Mo. App. 746; *McGill v. City of St. Joseph, Sup.*, 31 S. W. (2d) 1058, transferred 38 S. W. (2d) 725, 225 Mo. App. 1053; *Associated Holding Co. v. Kelley*, 31 S. W. (2d) 624, 336 Mo. 251; *City of St. Joseph v. Georgetown Lodge No. 327, I.O.O.F., of St. Joseph, Sup.*, 8 S. W. (2d) 979.

To the opposite effect are the cases holding that cities, school districts, etc., are comprehended within the term "the state or to any political subdivision thereof" as used in Section 13 of Article XIV of the Constitution of 1875. *State ex inf. Ellis ex rel. Patterson v. Ferguson*, 65 S. W. (2d) 97, 333 Mo. 1177, certiorari denied *Ferguson v. State of Missouri ex inf. Ellis*, 34 S. Ct. 559, 291 U. S. 682, 78 L. Ed. 1070; *State ex inf. McKittrick v. Whittle*, 65 S. W. (2d) 100, 333 Mo. 705, 38 A. L. R. 1099.

However, for the reasons mentioned, we do not believe that these cases are controlling in the present instance because of the rule that the literal meaning of constitutional provisions must not be adhered to when to do so would have the effect of destroying the true intent and meaning of the provision, and for the further reason that the cases mentioned in which the definitions have appeared were of limited application and only involved the construction of the jurisdictional and nepotism constitutional provisions referred to therein.

CONCLUSION

In the premises, we are of the opinion that the proper definition of the term "other political subdivision" as found in subsection 10 of Section 39, Article III, of the Constitution of 1945, is that which is found as Section 15 of Article X of the Constitution of 1945, and that such term as so defined must be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts, and any other public subdivision, public corporation or public quasi-corporation having the power to tax. We, therefore, hold that the use, purchase or acquisition of property paid for out of the funds of any township, city, town, village, school, road, drainage, sewer or levee district, or of any other public subdivision, public corporation or public quasi-corporation having the power to tax, is not subject to a use or sales tax by the State.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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WFB:HR