

MERCHANTS' LICENSES & BONDS:

1) The tax rate to be charged for merchants' licenses is the same as on real estate. Collector's fees, \$1.00. 2) Merchants' licenses run from Jan. 1. to Jan. 1. 3) If a merchant begins business after the first Monday in Jan. of any year his license would run to the following Jan. 1. 4) The bond of a merchant must be delivered to the Collector at the time November 25, 1946 license is issued. 5) If a merchant does not obtain and pay for a license for 5 consecutive years immediately preceding application for license for the current year, he must deliver a bond to the Collector at the time he obtains his license.

Honorable Hazel Palmer
County Collector
Pettis County
Sedalia, Missouri

Dear Miss Palmer:

This will acknowledge your letter requesting an opinion, respecting the procedure to be followed under House Bill #536 of the 63rd General Assembly. Your letter is as follows:

"Will you please give me an official opinion from the Attorney General's Office upon the following questions relative to the twenty-eight new sections enacted in lieu of Article 18, Chapter 74, Revised Statutes of Missouri, in these particulars, to-wit:

"How much shall the County Collector charge for Merchants' License? It was \$1. Now it seems it can be \$1 or 75¢.

"When is the License due? Formerly they issued from June to June.

"Do Licenses run from January 1 to January 1? - unless the person starts in business after that date, and then does the License run to the following January 1, or does it run for one full year from the date the License was issued?

"Shall the Bond be executed and delivered to the Collector at the time the License is issued?

"If a person was in business for six years but during that time was out of business for one year, does that break

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the 'five continuous years' provision in Section 11306 and require him to furnish bond?

"Thank you kindly for your official interpretation of these questions already promoted by the merchants of Pettis County. I wish to proceed under the new provisions strictly according to law, and do not wish to require something of the merchants that will not be followed the same way next year."

The delay in complying with your request was occasioned because there was later introduced, and the Legislature passed, House Bill #998, amending Section 11306 of said House Bill #536, and the later Bill was not finally passed until the late summer or early fall.

The questions you submit for an opinion are:

1st.: How much shall a County Collector charge as an ad valorem tax on merchants.

2nd.: Do merchants' licenses run from January 1st to January 1st.

3rd.: If a license is taken out after January 1st does it run until the following January 1st, or for a full year from the date of issuance.

4th.: Shall the bond required be executed and delivered to the Collector at the time the license is issued, and

5th.: If a person has been in business for six years but was out of business for one year during the six years does that break the "five continuous years immediately preceding an application" for a license for the current year, and require such person to furnish a bond.

Our opinion as to your question number 1 is that the rate of tax to be collected from a merchant is governed

by Section 4(a) of Article X of the new Constitution and House Bill #536, now a part of the statutes of this State. Section 4(a) of Article X of the new Constitution is as follows:

"Sec. 4(a). Classification of Taxable Property--Taxes on Franchises, Incomes, Excises and Licenses.--All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The general assembly, by general law, may provide for further classification within Classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types."

It will be observed that in said Section 4(a) of said Article X, real estate is placed in Class 1.

Section 11305 of said House Bill #536 is, in part, as follows:

"Merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise which they may have in their possession or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in January and the first Monday in April in each year; * * *".

Thus we observe that the value or rate of ad valorem tax assessed against merchants shall be such sum as may be levied by the County Court on real estate as may be provided by law. In other words, whatever rate of tax is levied against real estate the same rate must be used in fixing the rate for merchants' license taxes. This has long been the law of this State. House Bill #536 still adheres to that practice. The case of State ex rel. vs. Alt, was

before our Supreme Court on the question whether merchants were liable for a property tax or merely a license or occupation tax. The case is reported in 224 Mo. Rep. 493. The Court in holding that the laws relating to merchants' tax in effect provided for a property tax, although ostensibly, merely a license or occupation tax, l.c. 507, 508, said:

"* * * In this State merchandise is not listed for taxation as other personal property, but instead the merchant must apply for a license to trade as such, and without which he subjects himself to a forfeiture to be recovered by indictment. He must give bond conditioned for the payment of the tax. It is, however, provided that merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of goods, wares and merchandise which they may have in their possession at any time between the first Monday of March and the first Monday of June in each year. It is this amount, furnished by a sworn statement of the merchant, that forms the basis upon which the various state, county, school and municipal taxes are levied."

It appears from your letter that you are making inquiry respecting the amount of license tax a merchant should pay for his license. We, therefore, went to some length to give our opinion respecting that feature. However, it may have been that you intended to inquire only about the fee your office should collect for issuing such license. If that be your purpose, we refer you to Section 11314 of House Bill #995, recently passed by the Legislature, which is as follows:

"The collector shall, at the time of delivering such license, collect the sum of fifty cents, the fee herein allowed to the clerk for issuing the same, and twenty-five cents each for the bond and statement to be retained by the collector as his fee for furnishing the

same; provided that, in counties of the first class any fees provided for herein, received by the collector shall be paid into the county or city treasury, as provided by law."

This will outline your charges for issuing a license and for the bond and statement so that we believe you will have no difficulty in the matter if that be the object of your inquiry. We believe this will answer your first question.

Replying to your second question, whether the license runs from January 1st to January 1st, we think the new Section 11306 of said House Bill #998 answers this question. Said Section 11306 is, in part, as follows:

"Any person, corporation or copartnership of persons applying for a license to vend merchandise shall, before he or they shall receive such license, execute a bond to the state, with good and sufficient surety, conditioned that he will on or before the 31st day of December following, pay to the collector of the proper county all merchants tax due, which bond shall be approved by the collector and his approval indorsed thereon: * * *".

The part quoted provides for the giving of the bond to pay the tax due by the end of the following December. Such language indicates that the Legislature intended that the license should run from January 1st to January 1st or for whatever time of the year after the first of the year a person began business, and that his license and bond would run from that time until the next succeeding January 1st. There is no language or provision in any of the sections of either House Bill #356 or House Bill #998, as we read them, justifying the idea that if a person began business after January 1st of any year, say May 1st or June 1st, that his license and bond would run a full year to the corresponding month of the succeeding year. We believe Section 11328 of said House Bill #998, on the contrary, fully clarifies this question, and requires that the license and bond shall run from whatever time in the year they are executed

and delivered to the first of January next succeeding.

Said Section 11328 is as follows:

"When any merchant shall commence the business of merchandising in any county in this state after the first Monday in January, in any year, he shall execute a bond as provided for in Section 11306, conditioned that he will furnish to the collector of his county a statement, verified as herein required, of the largest amount of goods, wares or merchandise which he had on hand or subject to his control, whether owned by himself or consigned to him for sale, on the first day of any month between the time when he commenced business as a merchant, and the said first day in January next succeeding; upon which statement he shall pay a tax based upon the same rate as other merchants, to be determined by the number of months in business in any calendar year."

See also Section 11308 of House Bill #536.

This, we trust, will answer your question number two.

Replying to your third question and referring again to said Section 11328, supra, it seems to be clear that the Legislature intended that a merchant beginning business after the first Monday of January in any year should execute his bond at the time the license would be issued. Manifestly, he could not engage in business without the license, and the language, in part, of said Section 11328, supra, stating that, at the time he shall commence the business of merchandising he shall execute his bond, makes it plain, we think, that the merchant shall execute his bond and deliver the same to the Collector at the time the license is issued to him. We think this will answer your third and fourth questions, since the same provisions of the statutes quoted refer to both the period of time for which the bond and license may be issued, and also to whether the bond must be executed at the time the license is issued.

Replying to your fifth and last problem, we refer again to Section 11306 of House Bill #998, and the proviso thereof, which is, in part, as follows:

"* * * Provided that said bond shall not be required where any person, corporation or copartnership of persons has obtained and paid a license as required by law for a period of five continuous years immediately preceding an application for a license for the current year; * * * ".

This question calls for the construction of the language used in said proviso of Section 11306, supra. It would not appear to be difficult to give the ordinary meaning and interpretation of words to the language in said proviso. The proviso states that bond shall not be required where any person, corporation or copartnership of persons has obtained and paid a license, as required by law, for a period of five continuous years immediately preceding an application for a license for the current year. This could only mean that if such person, corporation or copartnership of persons had not obtained and paid a license for a period of five continuous years immediately preceding the application for a license for the current year, such person, corporation or copartnership of persons would be required to execute the bond required by law. In other words, if there had been a period of one year at any time within the five year period immediately preceding an application for a license where and when the person, corporation or copartnership of persons applying for a license for the current year had not obtained and paid a license he or they undoubtedly would be required to execute the bond required by law. This, we believe, will answer your fifth and last inquiry.

We believe said House Bills #536 and #998 provide such a plan of procedure respecting merchants' licenses and bonds as will permit the County Collectors to fix the periods for which both bonds and licenses shall run to be from January 1, of each year, to January 1 of the next succeeding year. This would, as we see it, permit the County Collectors of the several counties of this State and the merchants to depend upon a regular date and plan of complying with the recent statutes on the subject.

CONCLUSION.

It is, therefore, the opinion of this Department, considering the foregoing premises that:

1) The same tax rate shall be charged on the valuation of merchants' stocks for licenses as may be fixed by law for real estate. Collector's fee fifty cents for license, twenty-five cents each for bond and statement, total of \$1.00.

2) That merchants' licenses would run from January 1 of any year to January 1 of the next succeeding year.

3) If a merchant began business after the first Monday in January of any year his license would not run for a full year from its date, but only to the following January 1st of the succeeding year.

4) That the bond of a merchant should be, under the above cited and quoted statutes, executed and delivered to the Collectors of the several counties of this State at the time a license may be issued to any such merchant.

5) That if a person was in business for six years but during that time was out of business for one year, and did not obtain and pay for a license for a period of five continuous years immediately preceding an application for a license for the current year, such person would be required to execute and deliver a bond to the County Collector of any county in this State at the time of obtaining a license for a current year.

Respectfully submitted,

APPROVED:

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