

TAXATION (CITY SALES): A city may place restrictions upon the use of proceeds from a city sales tax by an ordinance which is referred to a vote of the people, but such restrictions may be altered by the governing body of the city, after the ordinance has been adopted, without a subsequent vote of the people.

OPINION NO. 79

January 16, 1974

Honorable Clifford B. Mayberry
Prosecuting Attorney, Adair County
I.O.O.F. Building
123 1/2 North Elson
Kirksville, Missouri 63501



Dear Mr. Mayberry:

This official opinion is issued in response to your request for a ruling on the following question:

"Can a City place restrictions upon the use of proceeds from a City sales tax, said restrictions being shown upon the ballot by which said sales tax is submitted to the people, which will be binding upon the City Government until and unless the matter is resubmitted to the people at a subsequent time."

The question arises from the following factual situation, as stated in your request:

"The City of Kirksville, Missouri has introduced an ordinance to submit to the people of Kirksville the issue of a City sales tax wherein the ballot will contain a restriction limiting the use of the sales tax to city street and storm sewer improvements. It is the City's desire to make this binding upon future city administrations."

You have not furnished us with a copy of the proposed ballot.

Your question is twofold in nature. We must determine, first, whether a city may restrict the proceeds of its city sales tax

Honorable Clifford B. Mayberry

to certain uses such as city street and storm sewer improvements, and, secondly, if such restrictions are enacted by an ordinance referred to a vote of the people, whether such restrictions may be amended without a subsequent vote of the people.

The City of Kirksville is a third class city. There appears to be no restriction on the power of a third class city to devote the proceeds of its city sales tax, enacted pursuant to Sections 94.500 to 94.570, RSMo 1969, to city street and storm sewer improvements. Section 94.510(1), in pertinent part, provides as follows:

"Any city may, by a majority vote of its council or governing body, impose a city sales tax for the benefit of such city in accordance with the provisions of sections 94.500 to 94.570; . . ." (Emphasis added)

Inasmuch as street and storm sewer improvements would clearly be for the benefit of the city, Section 94.510 would not prohibit such use of the proceeds of the city sales tax.

However, we do not believe that such a provision can be enacted in a manner which will make it binding upon future city administrations until it is repealed by a vote of the people. In our Opinion No. 39, issued January 3, 1973, to Representative Edna Eads, 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. In so holding, we quoted the following statement from the case of In re Condemnation of Property for Park in City of St. Joseph, 263 S.W. 97 (Mo.banc 1924):

". . . [A]n ordinance enacted under the initiative [Section 7950, RSMo 1919] must be proposed by the people and adopted by them. Such an ordinance cannot be repealed or amended, except by a vote of the people.

"There is an absence of this limitation in Section 7951 regulating the submission of ordinances to the people for their approval or rejection which have been enacted by the council. . . . Having been enacted and approved, it [an ordinance] is nevertheless

Honorable Clifford B. Mayberry

equally subject to the legislative will as to amendment or repeal as though it had not been referred. . . . Legislative action concerning a referred statute, whether it be state or municipal, is held in abeyance only until after it has been approved or rejected by the people. . . ." (Emphasis added)

From this statement of the principles governing ordinances which have been adopted by referendum, we conclude that the governing body of a city which has adopted such a city sales tax ordinance may amend that ordinance without submitting such amendment to a vote of the people. Moreover, such amendment could alter the prescribed use to which the proceeds of the city sales tax are devoted.

CONCLUSION

Therefore, it is the opinion of this office that a city may place restrictions upon the use of proceeds from a city sales tax by an ordinance which is referred to a vote of the people, but that such restrictions may be altered by the governing body of the city, after the ordinance has been adopted, without a subsequent vote of the people.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Very truly yours,



JOHN C. DANFORTH
Attorney General

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