

ST. LOUIS COUNTY LICENSING: The authority given to St. Louis County, a county of the first class, to require licenses upon the businesses itemized in Section 316.040, RSMo Cum. Supp. 1957, includes those businesses which are located within incorporated areas in the county.

September 21, 1959



Honorable Raymond B. Hopfinger
Senator, Fourteenth District
5916 Berkeley Drive
Berkeley 21, Missouri

Dear Senator:

Your recent request for an official opinion reads:

"The question has arisen in St. Louis County as to the authority of St. Louis County to tax, pursuant to R. S. of Missouri 316.040, 1949 businesses which are located within incorporated areas in the County.

I would appreciate an opinion from your office as to whether or not St. Louis County has this authority."

Section 316.040, RSMo 1949, to which you refer, was amended by the Laws of 1957 and now appears as Section 316.040, RSMo Cum. Supp. 1957. This section is quite lengthy and very largely consists of an itemization of various operations such as skating rinks, professional athletic exhibitions, dance halls, theater or motion picture theaters, miniature golf courses and many other businesses. It states that the county court of all counties of class one shall have the power to license such places and that it shall be unlawful for any person to operate any of the businesses itemized without taking out such a license.

Your question seems to be whether the power of the county court to license such businesses is restricted to licensing such businesses as are not located in an incorporated area. In other words, if one of the businesses itemized in Section 316.040 is within the bounds of a municipal corporation in St. Louis County, does this mean that it cannot be taxed by St. Louis County regardless of whether it is taxed by the municipality within which it is located or whether it is not.

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We would first note that there is nothing whatever in Section 316.040, supra, which would indicate that it was to be restricted in its application in any such manner. On the contrary, the plain meaning of the section is that it is applicable to all businesses itemized in it which operate within the county regardless of whether they are within an incorporated area. In the absence of any such restriction, we believe that the section is applicable to all such businesses operated within the county.

We noted above that Section 316.040, supra, authorized the "county court" of all counties of class one to license certain operations within their counties. We also take note of the fact that St. Louis County has adopted a charter and that the governing body, instead of being a county court, is a county council. In that connection, we particularly note Section 6 of Article III of this aforesaid charter which reads:

"The governing body of the County shall be the County Council which, except as otherwise provided in this charter, shall have and exercise all the powers and duties vested in counties and county governing bodies by the Constitution and laws of the State of Missouri and by this charter. All legislative power of the County shall be vested in the Council."

We also note Chapter 803 of the Ordinances. Section 803.010 reads:

"There is levied upon certain shows, professional performances, amusement facilities and devices, which are more particularly described by classification, a license tax, in an amount as set forth by classes in the following schedules: * * * "

There follows in numbered paragraphs one through eleven an itemization of such operations and the license fee for each.

CONCLUSION

It is the opinion of this department that the authority given

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to St. Louis County, a county of the first class, to require licenses upon the businesses itemized in Section 316.040, RSMo Cum. Supp. 1957, includes those businesses which are located within incorporated areas in the county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:mlw:em