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August 20, 1982

FILE NO. 82-027

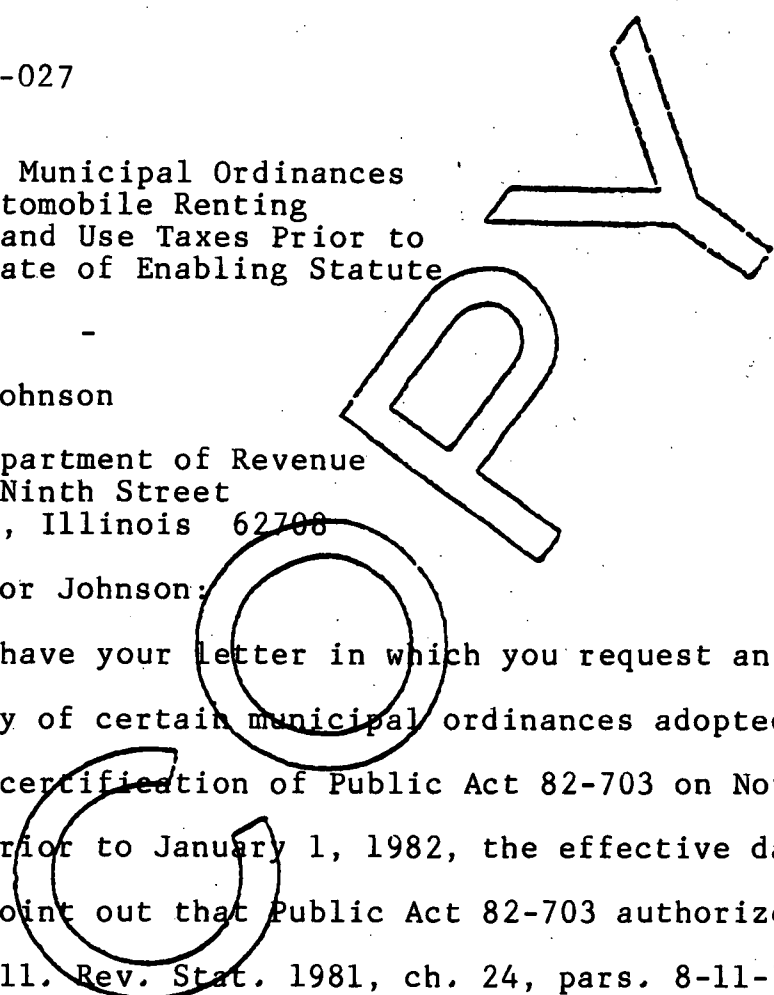
REVENUE:

Validity of Municipal Ordinances
Imposing Automobile Renting
Occupation and Use Taxes Prior to
Effective Date of Enabling Statute

J. Thomas Johnson
Director
Illinois Department of Revenue
1500 South Ninth Street
Springfield, Illinois 62708

Dear Director Johnson:

I have your letter in which you request an opinion on the validity of certain municipal ordinances adopted after the Governor's certification of Public Act 82-703 on November 12, 1981, but prior to January 1, 1982, the effective date of the Act. You point out that Public Act 82-703 authorizes municipalities (Ill. Rev. Stat. 1981, ch. 24, pars. 8-11-7, 8-11-8), counties (Ill. Rev. Stat. 1981, ch. 34, par. 409.15), metro east mass transit districts (Ill. Rev. Stat. 1981, ch. 111 2/3, par. 355.02), and the regional transportation authority (Ill.



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Rev. Stat. 1981, ch. 111 2/3, par. 704.03.1) to impose a tax upon persons engaged in renting automobiles and upon persons using rented automobiles in their respective jurisdictions. You state that some municipalities adopted and published tax ordinances after November 12, 1981, and prior to January 1, 1982. Others adopted such ordinances after November 12, 1981, and prior to January 1, 1982, but published the ordinances after January 1, 1982. The Department of Revenue has taken the position that in either of the described circumstances the municipal ordinances are ineffective. I agree with the position of the Department.

Public Act 82-703 did not become effective until January 1, 1982. (P.A. 82-703, § 11.) A statute has no force whatever until it goes into effect pursuant to the law relating to legislative enactments, and it speaks from the date it takes effect and not before. Dunne v. County of Rock Island (1918), 283 Ill. 628, 636; Farmers National Bank & Trust Co. v. Berks County Real Estate Co. et al. (S.Ct. Pa. 1939), 5 A.2d 94, 96; People v. Righthouse (S.Ct. Cal. 1937), 72 P.2d 867.

Since non-home rule municipalities must have statutory authority to enact an ordinance (Baltis et al. v. Village of Westchester et al. (1954), 3 Ill. 2d 388, 397; City of Chicago et al. v. McCoy (1891), 136 Ill. 344, 351), and because Public Act 82-703 did not become effective until January 1, 1982, it

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is clear that any non-home rule municipal ordinance purporting to impose a tax pursuant to that Act, prior to its effective date, would be invalid and ineffective. Such ordinances did not become valid on January 1, 1982, since the power to act was lacking at the time the purported action was taken. (People v. Thompson (1941), 377 Ill. 104, 111.) The fact that some ordinances were published after January 1, 1982, would be immaterial since the ordinances themselves are invalid, having been enacted prior to January 1, 1982.

I agree with your conclusion that the Supreme Court's decision in Ogilvie v. Lewis (1971), 49 Ill. 2d 476, is distinguishable from the matters at issue. The court in that decision held that the enactment of legislation in anticipation of an adopted but not yet effective constitutional provision is within the plenary lawmaking power of the General Assembly unless anticipatory legislation is prohibited by constitutional provisions. The court pointed out at page 483 that:

"Practical considerations also indicate the desirability of anticipatory and implementing legislation in advance of the effective date of a new constitution. Such legislation is necessary in some cases to supplement new constitutional provisions which are not self-executing and in other cases to insure an orderly and efficient transition from the old to the new constitution and a continuity in the operation of government."

One of the basic differences between the matters at issue and the Ogilvie v. Lewis decision, as you have indicated,

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is that in the case of non-home rule municipalities, authority to enact an ordinance must be derived from an effective statute. In other words, non-home rule municipalities lack plenary lawmaking powers. Furthermore, the court in the Ogilvie decision was careful to point out that the anticipatory legislation was signed by the Governor and became law one day after the Illinois Constitution of 1970 became generally effective.

I also agree with your conclusion that the automobile renting occupation and use tax ordinances of home rule municipalities, purportedly enacted pursuant to P.A. 82-703, are invalid if such ordinances were adopted prior to January 1, 1982. Section 5 of Public Act 82-703 added sections 8-11-7 and 8-11-8 to the Illinois Municipal Code (Ill. Rev. Stat. 1981, ch. 24, pars. 8-11-7, 8-11-8). Section 8-11-7 of Public Act 82-703 provides in part:

"The corporate authorities of a municipality may impose a tax upon all persons engaged in the business of renting automobiles in the municipality. * * * "

A tax upon persons engaged in renting automobiles is a tax upon occupations within the meaning of section 6(e) of article VII of the Illinois Constitution, which provides in pertinent part:

"A home rule unit shall have only the power that the General Assembly may provide by law * * * (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations." (Emphasis added.)

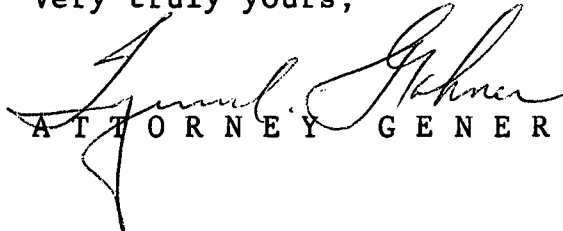
Since home rule units have the power to impose taxes upon

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occupations only if the General Assembly so provides by law and since there was no operative and effective law at the time the municipalities adopted their ordinances, even the ordinances of the home rule units are invalid. I reach no different result with respect to the imposition of the use tax since the ordinances in question purport to impose that tax pursuant to the authority granted in P.A. 82-703 and not pursuant to home rule powers granted in section 6 of article VII of the Illinois Constitution.

In conclusion, therefore, it is my opinion that ordinances of municipalities, including home rule units, which adopted tax ordinances prior to effective date of Public Act 82-703, are invalid. The fact that some of the ordinances were published after January 1, 1982, would be immaterial.

Very truly yours,


ATTORNEY GENERAL