

### **Chain Stores—Taxation—Discrimination.**

Classification of stores according to the number operated for taxation purposes is unlawful where, because of such classification, some stores are exempt from the tax.

No tax may be laid on stores operated by owners having their head offices or headquarters in some other state merely because of this fact while exempting similar stores having their head offices or headquarters in this state.

Hon. John R. Page,  
Member of Senate,  
Helena, Montana.

January 27, 1931.

My dear Senator Page:

I have looked over the draft of law submitted by you relating to

the taxation of chain stores and which apparently is a copy of a law enacted in 1929 by the legislature of North Carolina.

North Carolina attempted to provide a special tax for chain stores in 1927 requiring a tax to be paid by any person, firm or corporation operating six stores or more. The supreme court of that state held the law unconstitutional. The grounds upon which the court based its opinion are stated in the case of Great Atlantic Tea Company vs. Doughton, 144 S.E. 701. The law as enacted in 1929 apparently is an attempt to meet the objections stated in the opinion but I do not believe it accomplishes this.

In Jackson vs. State Board of Tax Commissioners a statute of the state of Indiana which sought to provide a tax especially for chain stores was under consideration by the United States District Court, and it was held that the statute also was unconstitutional. This opinion is found reported in Vol. 38, Fed. Rep. (2nd Series) at page 652 and the grounds for the holding by the court are fully set forth therein.

In the case of City of Danville vs. Quaker Maid the court had under consideration a statute of the state of Kentucky attempting to provide a special tax for cash and carry stores and the court held this statute unconstitutional likewise. This case will be found reported in 278 S.W. at page 98.

I believe that the draft of the law submitted by you is subject to the same attack made upon the laws involved in the cases hereinbefore mentioned, namely, that it is discriminatory, especially when the only basis for classification is the number of stores operated and because of such classification some stores are exempt from the tax.

You also inquire if it would be possible to impose such a tax so that it would affect only those stores operated by owners having their head offices or headquarters in some other state.

I think this question has been answered in the negative by the United States Supreme Court in Chalker vs. Birmingham, etc., 249 U.S. 522, and Williams vs. Standard Oil Co., 278 U.S. 235.

Very truly yours,

L. A. FOOT,

Attorney General.