QUESTIONS ABOUT LICENSE.

Did the City Council Have the Legal Right to Charge Licenses? If so, were "Graduated" Licenses Granted?

...Which Many Citizens Take an Inter-... Disinterested Spectators, May ...

...ers

...or

...rter by a ...ust amending ...7 is a general ...ect, the powers ...cify in what mat- ...ded, to wit: "By con- ...s mentioned all the ... 1897, No. 36 and No. 37, ...eady enjoyed by said municipal

...n alleges that his Honor erred in ...ion 12 of the said Act of 1896 is un- ...se it does not provide that the license ...oned shall be graduated.

...d Act of 1896 was passed in pursuance of Sec- ... 8 of the Constitution of 1895, which directs ...e General Assembly shall provide by general ...e organization and classification of municipal ...ons, etc.

...ection 6 of Art. 8 is as follows:

"That corporate authorities of cities and towns in this ...ate shall be vested with power to assess and collect ...es for corporate purposes, said taxes to be uniform in ...ct to persons and property within the jurisdiction of ...composing the same, and all the property, except ...exempt by law, within the limits of cities and ...l be taxed for the payment of debts contracted ...ority of law. License or privilege taxes impos- ...graduated so as to secure a just imposition of ...n the classes subject thereto."

... said Act simply conconfers on municipal ...g within the provisions of the act the ...e taxes. It does not impose the ...porations to do so. It merely ... by ordinance the payment of

...in this act that such ... the

referred to conferred upon the City Council of Abbeville the power to impose license taxes, for the reasons stated in said exceptions.

If the construction given by His Honor to section 1 of the act of 1897, is not correct, (see brief, folio 89.) it would be hard to determine what the act does mean or for what purpose it was passed. Said act cannot as contended by appellants refers only to those corporations created under the act of 1896. The Legislature certainly did not mean to pass an act conferring on those corporations the powers which they already had.

There is no provision in the act of 1896, No. 36, requiring such ordinances submitted to a vote of the people. Section 1 of said act refers solely to *proposed* towns, and not to towns already in existence.

Sec. 25 provides a method by which a town already chartered and desiring to surrender its charter and of becoming incorporated under this act may do so. The terms of this section, as held by His Honor the Presiding Judge, are manifestly permissory.

The act of 1899 is entitled, "an act to provide a ...eral Law for amendment of Town and City Charters," ...oes nothing more than is indicated by the title. It ... a method for amending such charters. It ...ctive. This act is as follows:

... the approval of this act, the ...tion of any city or town in ...wn was originally incor- ...ibly or under the gen- ...may be amended in ...constitution and

... of acts

...rter by a ...ust amending ...7 is a general ...ect, the powers ...cify in what mat- ...ded, to wit: "By con- ...s mentioned all the ... 1897, No. 36 and No. 37, ...eady enjoyed by said municipal

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...in this act that such ... the

exaction for the privilege of pursuing a calling, may be imposed and collected in the form of a license fee." See same language in the opinion of the Court, at p. 516, near end of second column, citing Cooley on Taxation, pp. 591. 592, 597.

Appellants contend in their third exception that the constitution of 1895 establishes a new rule, and that the case of Information vs. Oliver and cases cited above are not applicable to said new constitution.

Sec. 1 of Art. 19, entitled, "Finance and Taxation," and Sec. 6, Art. 8, entitled, "Municipal Corporations and Police Regulations" are the only provision in the constitution on this subject. The cases above cited held, that under the constitution of 1868, the Legislature could grant the power to impose such license taxes although the constitution contained no provision on the subject. In the present constitution the power to impose such taxes is expressly given, and there is no limitation upon it, except that such taxes are to be graduated, etc., and this is only as to the manner in which the power is to be expressed.

Second.

Has the power to impose license taxes been exercised by the City Council of Abbeville in conformity to the Constitution, and such license taxes properly graduated, by the ordinance in question?

The first sentence of Sec' 6, Art. 8 of the Constitution requiring "said taxes to be uniform in respect to persons and property" does not apply to the last sentence, providing for "license or privileged taxes."

In the case of State vs. French, 30 L. A. R., 427 and 428, the Court in construing a similar provision in Montana Constitution said: "We are of the opinion that the first sentence of Section 1, Art. 12, and the whole of Sec. 11, Art. 12, are upon the same subject, and must be read together, and that they refer to taxation, and the equality and uniformity thereof, and that the last sentence of Section 1, Art 12, upon licenses, does not fall within the uniformity pro- ...ion."

In the same case, p. 425, the following is quoted from ...y on Taxation. "In another chaper it has been ...that the constitutional provision requiring the tax- ...of property by value have no application to the tax- ...f other subjects, and do not, therefore, by implica- ...bid the taxation now under consideration. From ...titled "Taxation of Business and Privileges."

...skell, L. R. A., Vol. 30, p. 529, the Court says, ...wer to license for purposes of regulation and ...ves the right to make distinctions between ..., and between essentially different methods ...he same genetal character of business or

...e case after referring to the difference in ...en the petitioner and others, the Court says: ...t liberty to say that this difference does not ...ust ground for the discrimination which the ...kes between the two. The tax imposed is ...y unreasonable, and to say ...e the legislative body of the ... a heavier license upon the ...han where carried on in a ...in Ex. parte Hurl, 49 Cal., ...e common council has im- ...ne pursuit than another the ... "But to argue thus is to for- ...ority of the common council to fix rates ... a branch of the taxing power, which is, in it- ...the power to discriminate as to the objects upon ...which burdens are to be imposed, but which, not being taxation pure and simple, is yet untouched by the consti- "tutional requirement of uniformity."

In the above case it was held, p. 527, "What is a reasonable license fee must depend largely upon the sound discretion of the City Council, etc."

Mankato vs. Fowler, 33 Minn., 364, "And Courts will not interpose and declare a license tax to be unjust and unconstitutional unless a flagrant case of excessive and oppressive abuse of power by the City authorities in levying the tax is established." Lyons vs. Cooper.

These two cases cited from brief in case of State vs. Wheelock, 30 L. R. A. p. 432, Sub. div. 5, that discrimination between merchants having fixed places of business and persons selling to the trade, and retail dealers with no fixed place of business is not unlawful for the purpose of a license tax.

In Albrecht vs. State, 34. Am. Rep. 743, a Texas case: It was held that, the constitution of that State gave the right to levy such taxes, and there was no limitation other than that the tax should be uniform upon the same class. The Court then stated some of the methods in which such taxes should be imposed as follows:

1. On the privilege of carrying on the business.
2. On the amount of business done.
3. On the gross profits of the business, etc.

In the same case the Court says, "To tax a merchant upon his stock as property, and also upon his gross sales, may seem burdensome, but is not unconstitutional when not expressly forbidden by the constitution."

Nor is a license tax imposed by a municipality upon merchants . . graduated according to their monthly sales unconstitutional, as it applies equally to all in same category. City vs. Crocker, 16, Cal. 119. Cited from brief L. R. A, 30. 419. So, a license upon merchants is not unconstitutional if graduated by average amount of stock. Newton vs. Atc" 31, Kan. 157. Brief L. R. A., Vol. 30, p. 422. And ... ordinance changing a license on vehicles, graded according to the character of the vehicles, the uses to which they are put and the number of horses used is not void, etc., as it acts uniformly on all subjects in same class.

"Imposing on laundrymen a license of $15.00 for a steam laundry, $10.000 on every male person in the busi- ...ess other than steam laundry, and $25.00 for a male laun- ... employing one or more other persons, is constitu-

...n tax is equal and uniform if all per- ...ine calling, trade or profession are taxed

...nity of a license tax is required only as to the ...which it operates." Banta vs. Chicago, 40 L. ...617, See last paragraph of Opinion p. 617. "A ... cannot be deemed unequal because it reaches one ...pation only if it reaches all who follow that occupa- ...tion."

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