

COUNTY COLLECTORS:

Taxes locally assessed against electric power and light company to be included in the matter of taxes locally assessed, for the purpose of determining collector's commission.

May 14, 1936

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Mr. R. W. Starling  
Prosecuting Attorney  
Miller County  
Tuscumbia, Missouri



Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this Department, which reads as follows:

"A question has arisen concerning the annual settlement of our county collector, Mr. Elmer Slone, and our county court has suggested that an official opinion be obtained from your office.

"The only matter involved is the amount of the salary to which the collector is entitled, and that is dependent upon his proper classification for salary purposes, and this, in turn, depends upon a construction of Section 9935, R. S. 1929, as amended by the Act of the Legislature, Laws of 1933, page 454, as applied to the facts of this case.

"The whole matter is involved in the local assessment and levy against the Union Electric Light & Power Co. In previous years, the Miller County real estate owned by this corporation, has been assessed by our county assessor and returned on the 'Land Book' as other real estate was assessed and returned. The same procedure

was followed by the assessor for the taxes for the year 1935. This local assessment of real estate belonging to said corporation, resulted in a levy and tax charge against the Union Electric for this item of their property of \$49,080.30.

"The remaining locally levied and assessed property in Miller County is represented by a tax charge of \$117,027.33, which, taken alone, would place the collector in Class VIII. If the tax charge against the local real property of the Union Electric is added to the above amount, he would be placed in Class X. Class eight fixes a salary of \$3,000.00, whereas class ten provides for a salary of \$4,000.00.

"The collector contends that the Union Electric taxes should be counted in fixing his classification, as it represents locally levied and assessed property, and that the Act of 1933 being the last expression of the Legislature on the subject, only excepts back taxes. To hold otherwise, it means a substantial reduction of the collector's salary in this county, at a time when added duties are placed upon him by reason of the abolishing of the treasurer's office. "

Section 9935, Laws of Missouri 1933, page 454, provides, in part:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in

collecting the revenue, except back taxes, the following commissions and no more:

"I. In each county in this state wherein the whole state, county, bridge, road, school (school) and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year amount to \_\_\_\_\_ dollars or less, a commission of \_\_\_\_\_ per cent on the amount collected."

The purpose of the above section is to determine the amount of compensation a county collector is to receive for his services in collecting the current revenue. The commission which the collector receives for collecting said revenue is based on the amount of state, county, bridge, road, school and all other local taxes assessed and levied for any one year.

Section 10066, Laws of Missouri 1933, pages 422 and 423, reads, in part:

"\* \* \* \* and all property, real and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county courts, and the county and state boards of equalization are hereby required to perform the same

duties and are given the same powers in assessing, equalizing and adjusting the taxes on the property set forth in this section as the said courts and boards of equalization have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes on railroad property; \* \* \* \* \*."

The above section provides that the property owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gasoline pipe lines and express companies shall be subject to taxation to the same extent as the property of private persons, and shall be levied and collected in the same manner as now or may hereafter be provided by law for the taxation of railroad property in this state.

In the case of State v. Gehner 286 S. W. 1. c. 119, the Court copied with approval an opinion given by the Attorney General's office, as follows:

"There is no question about how railroad property should be assessed. Section 13001, R.S.1919, may be said to be the index finger of authority pointing to the right to assess railroad property, and section 13002 enumerates certain specific property in pointing out the manner of such assessment. This has been called the distributable property of a railroad company, a sworn list of which must be furnished the state auditor within a stated time, to be assessed by the state board of equalization.

"Section 13027, R.S.1919, provides that all property of the railroad company not particularized by section 13002 shall be assessed locally, and it will be seen that this section also particularizes somewhat the local property by saying what it includes such as land, machine, and workshops, roundhouses, warehouses, and other buildings, goods and chattels and office furniture of whatever kind or character.

These sections seem to be an undertaking to set forth in contradistinction what shall be termed distributable property and what may be termed the non-distributable property of railroads, and the sections named the assessing authority for each. The underlying principle characterizing the distinctions so made would seem to be that the distributable property consists of that which is used directly in the operation of the railroad, and the non-distributable property consists of such property whose use may be only indirectly involved.

"I take it that the particularization employed in sections 13002 and 13027 was not intended by the Legislature to be the conferring of a power with limitations upon that power to tax only what was therein specified, but that the undertaking to particularize was intended to be illustrative of the method or manner of handling the property for taxation purposes; that the property known as the distributable property of the railroad company, from its character and manner of its use, could be better handled for taxation purposes through the state board of equalization and a more nearly just assessment accomplished; and that for this reason the Legislature made it the state board's duty to make the assessment, while it left to the local authorities the right to assess purely local property. \* \* \* \* \*

"There was no such particularization in providing for the assessment and taxation of bridges, telegraph, telephone, and express companies, electric power and light companies, electric transmission lines and oil pipe lines, as was made by the Legislature in pointing out the method for taxing railroad property, but the section was made to refer back to the railroad statutes for the manner of taxation, and the two groups of statutes, I think, should be read together in order to

arrive at the legislative meaning.

"In the light of all these statutes, when read together, it is the opinion of this department that section 13056, R.S.1919, as amended by the act of 1923, means that such of the properties named therein as may be used distributably, including franchises, are to be assessed by the state tax commission, and that the remainder, or nondistributable property, is to be left to the local authorities for assessment according to the practice followed by the tax commission prior to the opinion of July 31, 1923."

In view of the above, and the practice followed in this State by the State Tax Commission for many years, there can be no doubt that the distributable property owned by telegraph, telephone, electric power and light companies, electric transmission lines, are to be assessed by the State Tax Commission and that the remainder or nondistributable property is locally assessed. It was so held in the case of State v. Baker 293 S. W. 399.

This Department, in an opinion given to Lewis A. Duval, Prosecuting Attorney Macon County, Missouri, under date of August 21, 1935, held that the amount of taxes assessed and levied against a railroad should not be included in the amount of taxes assessed and levied for the purpose of determining the collector's commission under Section 9935, supra. The reason for so holding, however, was that Section 10044, Revised Statutes Missouri 1929, provides a special commission for the collector in collecting the railroad taxes. While taxes on property of telegraph, telephone and electric power and light companies are assessed and collected in the same manner as taxes on railroad property, there is no special statute allowing the county collector a special commission for the collection of these taxes.

Mr. R. W. Starling

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CONCLUSION

It is, therefore, the opinion of this Department that the taxes locally assessed against electric power and light companies are to be included in the total amount of taxes locally assessed and levied for the purpose of determining the commission which the county collector receives for collecting said revenue.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General

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