

TAXATION: Construction of House Bill No. 328 with
BOARD OF EQUALIZATION: reference to the duties of the State Tax
Commission.

August 13, 1941

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State Tax Commission
Jefferson City, Missouri



Attention: Mr. Jesse A. Mitchell,
Chairman, State Tax
Commission

Gentlemen:

This is in reply to yours of recent date wherein you request an opinion upon the following statement of facts:

"This department has on file complaints on assessments of property under the assessment made as of June 1, 1940.

"House Bill No. 328, enacted by the last General Assembly, seems to raise the question of whether or not the Tax Commission now has jurisdiction to pass on these complaints. Will you please furnish this department with an opinion as to the status of these complaints and the jurisdiction of the Commission over them with reference to the provisions of said House Bill No. 328."

House Bill No. 328 amends Section 11381, R. S. Missouri 1939, in so far as it applies to the question here. It provides as follows:

"Section 11381. The county board of equalization shall meet on the first Monday of March and at such other time as the board may deem necessary, and shall observe the following rules: First, it shall raise the valuation of all such tracts or parcels of land and any personal property, such as in

its opinion have been returned below their real value; but, after the board shall raise the valuation of such real estate or personal property, it shall give notice of the fact, specifying the property and the amount raised to the persons owning or controlling the same, by personal notice, through the mail or by advertisement in any paper published in the county, and advising and notifying the persons owning or controlling said property of a day certain, not less than ten nor more than thirty days from the date of said notice, on which day certain the board of equalization will meet to hear reasons, if any may be given, why such increase should not be made; Second, it shall reduce the valuation of such tract or parcels of land or any personal property which in its opinion has been returned above its true value compared with the average valuation of all real and personal property of the county. Provided, however, that prior to the third Monday of April each year, the tax assessment rolls shall be passed upon by the County Board of Equalization and Appeals to permit the further tax procedure provided by law, and on and after the third Monday of April each year the State Tax Commission shall have jurisdiction to act under the authority of Section 11028, and the county clerk and taxing authorities shall comply with the requirements of Sections 11382 and 11383."

This bill, by Section 2, also carries an emergency clause which it would appear that the lawmakers took into consideration the fact that the County Board of Equalization could not complete its work within the time now provided by law and, therefore, contemplated that the County Board of Equalization start the performance of its duties as provided by this bill.

Referring to this bill as it was originally introduced, it will be seen that it did not contain this proviso clause. The House Journal shows that this proviso clause and the emergency clause was recommended by the House Committee and adopted by the House when the bill was up for perfection. By the first part of this section it would seem that the lawmakers intended that the Board of Equalization could meet at any time on and after the first Monday of March up until the 31st of December of that year. Apparently they had in mind that this bill would not be practical and workable under our plan of assessment and valuation because the tax roll cannot be completed until the State Tax Commission has performed its duties under Section 11028, R. S. Missouri 1939. Therefore, the proviso clause seems to have been placed in the bill.

Then the question is: What effect does the proviso clause have on this bill? We have some rules of statutory construction applicable to proviso clauses which are applicable here. A number of cases are cited in Words and Phrases, Permanent Edition, No. 34, at page 700 et seq., and we particularly call attention to a statement pertaining to the Missouri case cited, *Regan v. Iron County Court*, 125 S. W. 1140, 1142, 226 Mo. 79, wherein the following statement is made:

"A "proviso" in a grant or enactment is something taken back from the power just declared. The grant or enactment is to read, not as if the larger power was ever given, but as if no more was ever given than is contained within the terms or bonds of the proviso."

This rule is further announced in *State ex rel. Bair v. Producers Gravel Co.*, 111 S. W. (2d) 521, 341 Mo. 1106, 1114:

"The terms of a proviso limit the general terms of the broad act and it can make no difference as to the force and effect of a proviso, whether its purpose is to limit the terms of a statute which grants rights, or whether it limits the powers of a statute which restricts

rights.' * * * * *

(Citing cases)

Referring to this proviso clause, it will be seen that this clause, by plain language, contemplates that the County Board of Equalization and Appeals shall have passed upon the assessment rolls by the third Monday in April. Of course, this construction is not in harmony with the first part of said Section 11381, supra, but under the rules of construction hereinbefore referred to if the proviso clause conflicts with the general provisions of the act then the proviso clause must prevail.

Another reason might be advanced why this proviso clause should prevail is that if a complainant resorted to the County Board of Equalization at a time so late in the year that it would be impossible for the State Tax Commission to perform its duties under Section 11028, supra, then the act would be in violation of the Fourteenth Amendment of the Constitution. The rule as to the constitutionality of such a provision is stated in State ex rel. Bair v. Producers Gravel Co., supra, l. c. 1114, as follows:

"* * Does the law, or course of procedure in question operate alike on all questions in the same class? The unbroken rule is that if the law or course of procedure in question does operate alike on all in the same class, then the equal protection clause of Section 1 of the Fourteenth Amendment is not violated. * * * * "

The converse of this rule is that if the law or course of procedure for the assessment does not operate alike on all persons in the same class, then it violates the provisions of the Fourteenth Amendment.

CONCLUSION

Answering your request, it is the opinion of this department that the proviso clause in said Section 11381, House Bill No. 328, prevails over the general provisions of the act, and that the tax rolls shall be passed upon by the County Board of Equalization and Appeals prior to

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the third Monday of April of each year and, therefore, the complaints on assessments of property under the assessment made as of June 1, 1940, which are now on file in your department, are before you for consideration, and that the Tax Commission has jurisdiction to pass upon these complaints.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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