

HIGH SCHOOL LEVY:- Taxpayer--Voter. (Supplemental opinion)
to be attached to opinion of April 3rd 1933. "Who Is A Taxpayer."

April 13, 1933



Honorable Chas. E. Lee,
State Sup't of Public Schools
Jefferson City, Missouri

Attention: Mr. George S. John
State Dep't of Educ.

Dear Sir:

Your letter of April 6, 1933 received, in which you ask, (First): Is a person considered a tax payer for the purpose of voting on the school levy if they have property subject to taxation even though it has not been listed by the assessor, (Second) and if the property has been listed in another person's name.

You quote Black's definition of a tax payer that I furnished to you heretofore by saying:

"I take this to mean a person subject to a tax, that is having property subject to being taxed, even though it has never been assessed or possibly was assessed under another person's name or with their property."

The "tax-payer" proposition is a broad one and is a hard one to very definitely define.

"The statutes bearing on the subject must not be so construed as to have unreasonable consequences, *** 71 S. W. 1.c. 746.

I will quote from different angles from decisions in Missouri in regard to who is a tax-payer.

In State ex rel. Sutton v. Fasse, 71 S. W. 746, the court said discussing who can be a director:

"Appellant insists the requirement that a school director must be a resident tax-payer of the district means he must have paid taxes for school purposes within the district."***

The court then said:

"That contention cannot be adopted without enlarging the language of the statute and changing its intention."***

Then the court defined a qualified voter and tax-payer:

"A qualified voter is one who under the general laws of the state would be allowed to vote in any county for state and county officers." "If he is also a taxpayer (that is a person owning property in the state subject to taxation, and on which he regularly pays taxes), he is eligible to the office of school director."

And the court held that such a person is eligible to the office of school director whether he had in fact paid a tax within such school district or not.

In State ex rel. Circuit Attorney v. Macklin 41 No. A. 335, the court defined a tax payer from several angles. The court said:

"Our duty is to declare and not to make the law."

And quoted with approval from Chief Justice Marshall in United States v. Fisher, 2 Branch, 338:

"Where great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the legislature be plain, in which case it must be obeyed."

"A person is not relieved from paying taxes on property owned by him, simply because it is erroneously assessed to another."

"If a person owns an interest in property and pays a tax thereon, he pays his tax regardless of the fact to whom the property is assessed."

"In determining the meaning of words and phrases used in a law, where they admit of more than one meaning, it is the duty of the courts to adopt that meaning which is in harmony with the context of the entire law, and prevents the mischief sought to be remedied;"

In the above cases the parties were considered and held to be tax-payers. State ex rel. Circuit Attorney vs. Macklin 41 No. A. 335 l.c. 348.

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In a much more recent case, State ex rel. Bellmany vs. Menegali, 307 Mo. 447, the court went into detail as to who was a tax payer. The "tax-payers" in that case are as follows: Mrs. Menegali was elected a school director and as her name was not on the tax list a suit was brought to oust her from the office and this state of facts appear:- It was testified that on the first day of June Mrs. Menegali owned a horse, four cows a sow and one half interest on an automobile, that the property was listed and assessed for taxation in the name of Joe Menegali, her husband. She was present when the assessment was made and signed her husband's name to the assessment, and the tax was paid on her personal property. She owned a one half interest in the automobile, the horse, cows and one cow, that same was purchased with her own money, that her husband paid said taxes for her and himself, and that in December 1921 she was the owner of the property aforesaid and paid her taxes in December 1921 in the manner aforesaid.

The court quotes with approval the case of State exrel. Circuit Attorney v. Macklin, 41 Mo. A. 339:

"If a person owns an interest in property and pays a tax thereon, he pays his tax regardless of the fact to whom the property is assessed."

If these laws were strictly construed, when new districts were formed there would be no one in that district who could serve as a director because in that district no one would have paid tax.

From the foregoing it is our opinion First, if the property has never been assessed any where, nor the taxes paid on same by any one even though it is owned by the person claiming to be a tax-payer under the rule quoted in Macklin Case (41 Mo.A. 1.c. 348) he would not be considered a tax payer, but as the court has said it would be a "mere sham." Second: That a person would be considered a tax-payer if he or she has property even though it is listed in another person's name if the taxes are paid on same whether by the person or by some one in his or her behalf.

Very truly yours,



GEORGE B. STROTHER
Assistant Attorney General.

APPROVED _____

Attorney General.

GBS:MM