

TAXATION: Construction of the word "destruction" as used in Section 9963b, p. 448, Laws of Missouri 1933.

11-23  
November 22, 1933



Hon. P. B. McHaney  
Counsel Insurance Department  
Jefferson City, Missouri

My Dear Mr. McHaney:

We acknowledge receipt of your recent request for an opinion of this office upon the following matter:

"In the course of our duties we have been requested to rule on the construction of Section 9963b Revised Statutes of 1929, as amended in 1933 (see laws of Missouri, 1933, page 448) with reference to the meaning of the word 'destruction' as used in said Section.

It appears to be the opinion of some legal experts that said Section applies only when there has been a total destruction of the premises referred to in said Section by fire, windstorm or tornado. Other legal experts contend that said Section applies to small claims for loss or damage to buildings, regardless as to whether the building was totally destroyed or not.

We therefore, would like your opinion as to the meaning of the word 'destruction' with reference as to whether it means a partial or total destruction, or any other meaning which you care to attribute to the word as it is used in said Section of the statutes."

We shall first refer to the pertinent parts of Section 9963b as found on page 448, Laws of Missouri 1933, which reads as follows:

"In the event of the destruction by fire, wind-storm or tornado of any permanent buildings \* \* \* situate upon any land \* \* \* which \* \* \* at the time of destruction were situate upon any land \* \* \* against which taxes were then levied and assessed and was so situate at the time of such levy and assessment, the lien of such taxes shall attach to and follow any insurance that may be upon said property at the time of its destruction, \* \* \* Provided however, if in the opinion of the county collector the destruction of such building \* \* \* will not prejudice the collection of such taxes, \* \* \* the county collector shall be authorized in writing \* \* \* to waive and release the lien by this section given. \* \* \* the assured \* \* \* making claim for loss \* \* \* shall file with such company a statement from the collector \* \* \* in writing, \* \* \* that there are no taxes against said buildings \* \* \* or that taxes exist against the same and the amount and description thereof, and whether or not such lien is waived \* \* \*"

## I.

## DEFINITIONS OF "DESTRUCTION."

In turning to Corpus Juris we find this definition of the word "destruction":

"Destruction. While the term ordinarily means breaking up in parts, demolition, pulling down, it need not necessarily be so construed."

In Ballentine's Law Dictionary we find the following:

"Destruction. The word is sometimes synonymous with the word loss."

While Ballentine does not contain any interpretation of the phrase "partial destruction," it does recognize the term "total destruction".

## II.

## RULES OF CONSTRUCTION REQUIRE CONSIDERATION OF PURPOSE OF ACT.

Now it is a familiar rule that in construing any statute

the terms thereof shall be applied in their usual and ordinary sense and that the entire statute should be considered in giving effect to any part or portion thereof. It is likewise true that the conditions under which the act was passed and the purpose for which it was passed are to be considered in giving effect to the statute, as stated in the case of Louisiana Purchase Company vs. Schnurmacher, 155 Mo. App. 601, l.c. 605:

"It is a familiar canon of construction of statutes that the conditions under which the statute was enacted, and the purpose to be secured by it, should always be kept in view in determining what the legislature meant by the language used in the statute." \* \* \*

Keeping these rules in mind and looking to the history of the statutes, we find it was passed during a period of severe financial stress, at a time when the collection of state, county and municipal taxes was at a very low ebb, resulting in these governmental agencies being without sufficient funds to meet the necessary expenses of government. It would seem that the purpose with which the law was enacted was to insure a prompt payment of taxes as well as to insure their ultimate payment.

In this statute, it is apparent that the interpretation which is to be given the word "destruction" will determine whether or not the statute promotes and fulfills the purpose for which it was enacted. As it appears that no lien exists except in the case of a "destruction" of the improvements, if the loss did not constitute a "destruction", no lien would exist. Accordingly, if a strict and narrow definition is given to the word "destruction" the collection of taxes may be seriously retarded. We find in the case of Rogers vs. National Council, 172 Mo. App. 719, l.c. 725, the following statement:

"\* \* \* In declaring the sense of a statute, the court should effectuate its obvious intent in favor of remedial justice rather than infringe its spirit by a narrow and technical construction."  
\* \* \*

Accordingly, in order to effectuate the purpose for which the statute was enacted, it is our opinion that the word "destruction" in the subject statute is used in the sense referred to in Ballentine's Law Dictionary herein referred to as being a "loss," and that the lien exists for a loss whether total or partial.

## III.

LIBERAL CONSTRUCTION CONSISTENT  
WITH MOREY vs. FELTZ.

This construction is in accord with the decision of the St. Louis Court of Appeals in the case of Morey vs. Feltz, 187 Mo. App. 650. In this case the court was called upon to interpret a clause in a lease exempting defendant from the payment of money rent "in case of overflow or destruction by water". After considering the phrase "overflow" the court takes up for discussion the clause "destruction by water," l. c. 662:

" \* \* \* And we think that the expression, "destruction by water," should be held to cover an actual destruction of crops upon the premises by water, though it be by water accumulating from excessive rainfall; and that therefore the jury should be instructed that plaintiff cannot recover cash rent for land, if any, upon which defendant's crop of oats was wholly or partially destroyed by water accumulating and standing upon such land." \* \* \*

## IV.

LIBERAL CONSTRUCTION MAKES STATUTE  
WORKABLE.

In order to clarify our position in reference to this law, we wish to make one further observation. As heretofore stated, it is a familiar rule that in construing any statute the four corners of the law should be considered and the same construed together. If a strict or technical definition or construction is to be given to the word "destruction" as used in this law, every county collector will be required to first, judicially determine whether or not the loss is of such a nature as will give rise to a lien on behalf of the state and second, if a lien exists form an opinion as to whether or not such loss will jeopardize the collection of taxes levied and assessed. In making the first determination, we suggest that if the collector erroneously decides that there is no lien for the loss he would be responsible on his bond for the collection of the taxes in the event they were not recovered. While if he erroneously determines a lien to exist on the insurance money when in fact the loss did not amount to a "destruction" within its technical definition, he might subject himself to a law suit to sustain his judgment. However, in respect to the second determination which he is to make as above stated, we direct your attention to this proviso in Section 9963b:

"Provided however, that if in the opinion of the county collector, the destruction of such building \* \* will not prejudice the collection of such taxes \* \* the county collector shall be authorized \* \* to waive and release the lien by this section given."

By reason of this clause the county collector may waive the tax if he feels that the collection of the tax has not been jeopardized by the "destruction." We cannot believe that the legislature intended to place upon the collector this double responsibility, or the duty of judicially determining in each case whether or not any lien existed on the insurance money. It is much more logical to give full effect to the above quoted proviso. This can only be given by considering any loss in "destruction" within this section.

This is an elastic provision, meant to protect the collector and to permit a practical application of this law. If the loss is negligible the collection of the taxes could not be jeopardized. It was intended that the collector should waive the lien given in such case. The only sensible application that can be made of this law is for the collector to waive the lien for the taxes when the amount of the loss is small or inconsequential. It is difficult to conceive that a five, ten or twenty-five dollar loss would jeopardize the payment of taxes under any circumstances. Of course, this is a matter for each collector to determine and upon which he should exercise his best judgment.

V.

#### CONCLUSION.

In view of the foregoing it is the opinion of this office that "destruction" as used in Section 9863b, page 448, Laws of Mo. 1933, is synonymous with the word "loss" and that the lien for taxes exist for any loss whether partial or total.

Respectfully submitted,

HARRY G. WALTNER, JR.  
Assistant Attorney General.

APPROVED:

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Attorney General.

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