

EN RE: Power of County Courts to compromise taxes  
after State Board of Equalization has fixed  
assessed valuations.

March 6, 1933.

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Hon. John S. Phillips,  
Prosecuting Attorney,  
Butler County,  
Poplar Bluff, Missouri.

Dear Sir:

You have asked my opinion as to power of County Court in Missouri to compromise taxes before and after suit begun to restrain collection thereof. You state counsel for the Fuel Company against whom taxes were assessed rely on the two cases of State of Missouri ex rel Brewer, County Revenue Collector vs. Federal Lead Co., 265 Fed. 305, and Southern Railway Company vs. Anthony, 73 Mo. 431 for authority of the County Court to compromise taxes.

In the Federal Lead Company case 265 F.L.C. 309, Judge Faris admitted no statute of Missouri authorizes County Court to compromise taxes except in certain enumerated cases within none of which this case of your county falls. Judge Faris said:

"Neither is there any statute in existence which expressly places authority on a County Court of Missouri to compromise taxes as such, and which have been levied and assessed and made up into a Tax Book in a case such as is here before me \*\*\* There is a statute, however, which confers upon the County Courts of the several counties of Missouri plenary authority to either raise or lower assessed valuations upon property, which lowering of valuations will have the inevitable effect to lower the amount of the taxes. This section reads as follows: (9946)

'In all cases where the County Court or Assessment Board or any city council or assessment board shall have assessed and levied taxes, general or special, on any real estate according to law whether the same be delinquent or otherwise, and until the same are paid and collected, with all costs, interest and penalties therein the City Council of any city and the County Court of any county shall have the full power to correct any errors which may appear in connection therewith whether of valuation, subject to the provisions of the Constitution of this state, or of ownership or receivership, double assessment, omission from

from the assessment list or books, or otherwise and to make such valuation, assessment and levy conform in all respects to the facts and requirements of the law. Any description or designation of property for assessment purposes by which it may be identified or located shall be a sufficient or valid description or designation" (Section 11492, R.S. Mo. 1909, and now 9946, R.S. Mo. 1929.)

The Federal Court quoted as source of power of County Court to compromise taxes, Section 36, Article VI, Missouri Constitution, in connection with Section 9946 R.S. Mo. 1929, and which Section 36 reads as follows:

"In each county there shall be a County Court which shall be a court of record and shall have jurisdiction to transact all county and such other business as may be prescribed by law."

The Federal Court held the above quoted section, 9946, R.S. Mo. 1929, and Section 36, Article VI, Missouri Constitution, made the County Court the general agent of the county for the transaction of county business and this general agency empowered the County Court to compromise state and county taxes.

It is an elementary rule of construction that all parts of a Constitution and all statutes on the same subject must be construed as related parts of a code of laws to accomplish a common end. Therefore, all parts of the State Constitution and the statutes relating to revenue and taxation must be considered in any effort to arrive at the intent and meaning of Section 36, Article VI, Missouri Constitution, and Section 9946, R.S. Mo., 1929.

Section 3, Article X, of the Missouri Constitution provides:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and shall be levied and collected by general laws."

This means state taxes shall be uniform throughout the state, county taxes throughout the county, and city taxes throughout the city.

Section 18, Article X of the Missouri Constitution is as follows:

"There shall be a State Board of Equalization, consisting of the Governor, State Auditor, State Treasurer, Secretary of State and Attorney General. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties of the state, and it shall perform such other duties as may be prescribed by law."

To carry out these Constitutional provisions, we find the following system for assessment, levy and collection of taxes: A local assessor first fixes the value in the county; the assessment of the county assessor is reviewed by the County Board of Equalization with power therein to lower or raise assessments of individual pieces of property; on completion of County Boards of Equalization the one hundred fourteen counties and the City of St. Louis send the assessments as made and equalized locally to the State Board of Equalization. Sections 9861 to 9865 R.S. Mo. 1929, provide procedure of State Board in equalization of the assessment of the different classes of property among the one hundred fourteen counties and the City of St. Louis, and the statute requires the Board to classify all real estate in cities and towns and villages as town lots and all other real estate as farming lands, and all personal property into twelve (12) named classes, and

"The Board shall proceed to equalize the valuation of each class thereof among the respective counties of the state in the following manner:

First - It shall add to the valuation of each class of the property, real or personal, of each county which it believes to be valued below its real value in money such per centum as will increase the same in each case to its true value.

Second - It shall deduct from the valuation in each class, of the property, real and personal which it believes to be valued above its real value in money such per centum as will reduce the same in each case to its true value."

Section 9865 of the 1929 statutes makes it the duty of the State Auditor to transmit to the County Clerks the assessed valuations of all classes of property as fixed and equalized by the State Board. And on the valuation there fixed by the State Board the levy of taxes is made for all state, county, city and school purposes, and the tax rolls delivered to the County Collector for the collection of taxes.

A few facts, the existence of which cannot be denied, should be kept clearly in mind in the ensuing discussion of the above outlined Missouri system of taxation. First - it is a fact that Section 3, Article X of Missouri Constitution commands (not permits):

"Taxes \*\*\* shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax."

Second - the law is therefore in Missouri the same class of property must be taxed uniformly all over the state.

Third - To secure this uniformity in taxation,

First - the rate for state purposes must be the same;

Second - there must be uniformity in the assessed valuation of the same class of property.

Fourth - Uniformity in taxation implies equality of the tax burden.

Fifth - The state rate of taxation is the same in every part of the state.

The Federal Court held while no statute gave County Court express power to compromise taxes, yet the power to compromise existed by indirection, because Section 9946 authorized the County Court at any time before the taxes were paid to lower the assessed valuation fixed by the State Board and thus lower the amount of taxes to be paid to the level of the agreed compromise, because if the assessed valuation is lowered, inevitably the amount to be paid in taxes is lowered.

All provisions of law, Constitutional and Statutory, on the same subject must be construed together.

Grimes vs. Reynolds, 184 Mo. 679

Therefore, all the constitutional and statutory provisions relating to assessment of property for taxation must be taken into account in construing Section 9946. In State ex rel Jamison vs. R.R. Company, 318 Mo., l.c. p. 290, in a tax case, it is said:

"A construction should never be given to a statute which would work such confusion and mischief unless no other reasonable construction is possible."

Statutes should receive a sensible construction such as will affect the legislative intention, and if possible so as to avoid an unjust or absurd conclusion

State ex rel Cass vs. Gorden, 266 Mo. 394

In State ex rel Macklin vs. Rombauer, 104 Mo. l.c. 631, the court said:

"It is an established rule of fundamental as well as other laws that the effects and consequences of any proposed interpretation of it may properly be considered to ascertain what was probably the intention designed to be expressed therein."

Apply these rules to Section 9946 and construction thereof by Federal Court and what is the result? What was the object of our constitutional and statutory tax provision? The end sought was uniformity in the burden of taxation borne by tax payers. In

Trust Company vs. Schramm, 269 Mo., l.c. 490

the court said:

"The State Board of Equalization was created primarily to secure and guarantee uniformity and equality in the burdens of taxation throughout the state."

The Federal Court held County Court could compromise taxes because it was the general agent in county affairs. But in compromising the taxes the County Court would be compromising all state, as well as county taxes. But lay aside that question. Our Supreme Court has had occasion to define what the words "county affairs" means as applied to the powers of a county court in

and said: State ex rel Buckner vs. McElroy, 309 Mo. l.c. 609-610

"The general rule is thus expressed in 15 Corpus Juris at page 456: \*Except as otherwise provided by law a Board of county commissioners or county supervisors ordinarily exercise the corporate powers of the county. It is an enlarged sense the representative \*\*\* of the county, having \*\*\* original and exclusive jurisdiction over all matters pertaining to county affairs. \*\*\* The county Board cannot exercise its constitutional jurisdiction within the territorial limits of another county \*\*\* county business \*\*\* means all business pertaining to the county as a corporate entity \*\*\* county affairs are those relating to the county in its organic and corporate capacity"

Our court in this decision confines the word "county affairs" to affairs relating wholly to the county and says constitutional jurisdiction is limited to affairs within territorial limits of the county and this definition of "county affairs" by its terms prohibits the county court from dealing with state affairs, such as lowering the assessment of values for state taxation purposes as fixed by the state Board of Equalization.

Section 9946 as it now stands first appeared in the Missouri laws in 1909, Session Laws 1909 p. 725 and Section 9317 R.S. Mo. 1909 was repealed and the present 9946 section substituted therefor. Section 9317 R.S. Mo. 1909, prior to the repeal thereof, read as follows:

"In all cases where any such city shall have assessed and levied taxes, general or special, on any real estate according to law, whether the same be delinquent or otherwise and until the same are collected and paid with all costs, interest and penalties thereon, the Mayor and Council of any such city shall have full power to correct any errors which may appear in connection therewith whether of valuation subject to the provisions of the Constitution of this state, or description of ownership, double assessment, omission from the assessment list or books or otherwise, and to make such valuation, assessment and levy to conform in all respects to the requirements of the law."

It will be observed the county court is not mentioned herein. The county court was brought into this section by the change made in 1909 above referred to, 34 years after the State Board of Equalization had been created by the Constitution and after said Board had been assessing values for state wide taxation for 34 years. This statutory history shows it was not intended to confer any power on the city and

town councils except to aid in the correction of clerical and administrative errors that had crept into the tax books.

Is it likely the Legislature 51 years ago intended to authorize town and city councils to lower and raise at their pleasure the assessed valuation by the State Board of Equalization for state wide levy of taxes for state purposes and for 30 years thereafter refused to give the same power to the 114 county courts in the state?

Section 3, Article X of the Missouri Constitution requiring uniformity of taxation and Section 18 of Article X of the same instrument must be read together and the object of their enactment thereby ascertained. The framers of the Constitution knew uniformity in taxation mean equality of tax payers in the tax burden. The framers of this organic law of the state further knew uniformity in taxation could only be obtained by uniformity in the assessed valuations of the same classes of property in the 114 counties and the City of St. Louis, and therefore in the same article on taxation wherein uniformity in taxation was commanded, an instrumentality was constitutionally created to insure this uniformity of taxation in the form of the State Board of Equalization, and in Section 18, Article X, the mandatory duty was imposed on this Board to equalize the assessed valuation of property among the several counties of the state in the following language:

"The duty of said Board shall be to adjust and equalize the valuation of real and personal property among the several counties in the state."

Our court holds this section is self-enforcing without legislation.

Railway Co. vs. State Board, 64 Mo. 294

Our Supreme Court has held the functions of the local Boards are purely ministerial after the State Board has acted. In

Trust Company vs. Schramm, 269 Mo., l.c. 498

our court said:

"As clearly indicating that the functions of the local board are purely ministerial after the state Board has acted we find Section 11408 (now Section 9817 R.S. of Mo. 1929) which provides that when the report of the State Board is not received at or during the session of the County Board, the County Clerk shall adjust the tax books according to such report when the same is received."

And Section 9865 R.S. Mo. 1929 provides:

"And it shall be the duty of the State Auditor to require the clerks of the several county courts of this state to keep up the aggregate valuation of real and personal property in their respective counties for those years in which no State Board of Equalization is held to the aggregate amount fixed by the last State Board of equalization."

This section again shows all assessment work by local boards or officials is purely ministerial after the State Board Acts.

The Federal Court held Section 9946 authorizes city councils and county courts (I say city councils as well as county courts, because under Section 9946 city councils are given the same power as county courts) after the State Board has fixed assessments to raise or lower said valuation.

Applying now the rule of construction hereinbefore set forth that consequences of a proposed interpretation may be considered in determining how statute should be construed, let us see what would result if the Federal Court is right. There are 114 counties and scores of cities in the state. No provision is made by law for a meeting of representatives of all these local subdivisions to agree on a common basis on which they would raise or lower the assessed value fixed by the State Board of Equalization on various classes of property. The result would be, of course, about as many different assessed valuations on same classes of property as there are counties and cities in the state. In the Schramm Case the St. Louis City Board raised bank stock assessment above the assessment thereon by the State Board and the Supreme Court held it had no power to increase the State Board's assessments, and in the opinion the Court discusses consequences of such an interpretation of the law and in 269 Mo., l.c. pp.498-499, the Court said:

"Section 11412 supra expressly authorizes the state board to not only increase the assessments made by the local authorities, but also empowers it in similar language to reduce the same to its true value. If its action in this respect were not held to be conclusive, clashes and conflicts would be inevitable and confusion and chaos would come out of what was intended for order.

Cases from other jurisdictions are cited, but they are of little value here, other than as tending to show that when a constitution provides for uniformity in taxation it is the general public policy, where the property located in different sections is assessed by different boards, to provide a superior board for equalization between them and that the decision of such board is made final. In fact, it has been said that under such circumstances the constitutional requirements of uniformity impose on the State the duty of adequately providing for such equalization.

(Railroad and Telegraph Co. v. Board of Equalizers, 85 Fed. 302.)

We have no doubt that had the Legislature in terms undertaken to provide that the property of banking corporations in the city of St. Louis should be assessed at a value different from the property of banking corporations in other parts of the State, its action could not be sustained. We are equally well satisfied that had the State Board of Equalization undertaken to assess the property of banking corporations in the city of St. Louis at a value different from that placed on the banking corporations in other parts of the State, its action would likewise be invalid. That which cannot be done

directly cannot be done through indirection, and if a method is provided which results in unjust discrimination, the result cannot be upheld. In *Railroad & Telephone Co. v. Board of Equalizers*, supra, it is said:

"This is equally so whether such a result is due to erroneous action by the board or to defect in the legislation, in not requiring equalization, and furnishing the means whereby this might be made real and effective."

In that case the court further said:

"It may be as well to say in this connection that it is now established that the constitutional requirement of uniformity in taxation applies to the mode of assessment, as well as to the rate of levy, and the Constitution may be violated in a lack of just proportion in the value at which property is assessed for taxation quite as much as in the rate or percentage at which the tax is actually laid on the assessed value."

And in the same volume (269 No.) l.c. p. 496, the court said:

"If property of the same class is assessed in one county at fifty per cent of its value, and in another at seventy per cent thereof, the State collects for its own use, as distinguished from what is collected for local purposes, a greater amount from a citizen in one of its parts than from another in a different part, although their property is of the same class and value and is receiving the same public benefits and protection."

No one can doubt but if city councils and county courts were allowed to fix final valuations for assessment in the state the citizens would be paying different amounts of taxes on the same class of property all over the state and this would create a discrimination and inequality which the Federal Courts hold they have a right to remedy by the restraining process of equity court although the legal form of the plan of taxation violates no clause of the Federal Constitution, yet the administration thereof through the inequalities in assessed valuations on the same class of property in different sections of the state causes unjust and illegal discrimination in amount of taxes paid by citizens on the same kind of property.

Thus we see, if the construction of the Federal Court should prevail, the provisions of Section 3, Article X of the Missouri Constitution commanding uniformity of taxation is robbed of its operating power, and Section 18 of Article X creating the State Board of Equalization and the and the work of the State Board both are rendered useless and ineffective.

If the County Court can lower the assessment of Fuel Co. property, it can lower the assessment on every piece of property in Butler County

and so can the county courts in the remaining 113 counties and the assessing officials in the City of St. Louis, and the result would be a chaotic variation of assessed values on same classes of property throughout the state, resulting in an inequality of taxation, which under the decision of the Federal Supreme Court would render all the taxes levies invalid, and in addition the state's income would be at the mercy of the county courts because these bodies would have power to lower or raise the assessed value on which state taxes are collected, and thus raise or lower the state income. Such a construction nullifies our whole constitutional and statutory plan of taxation and to my mind ignores the ordinary rules of construction of constitution and statutes.

The Federal Supreme Court had before it a Kentucky case wherein Constitution required uniformity and laws erected different assessing Boards and officials but provided no final board to equalize the work, and Federal Supreme Court held while the plan of the Constitution and laws of Kentucky violated no clause of Federal Constitution, yet because lacking equalization of assessment for tax purposes resulting in wide variance in amount of taxes paid by taxpayers on the same class of property in different sections of the state, the tax levy was illegal, and in

Greene vs. R.R. Co., 244 U.S., l.c. 513-515

the court said:

"The action and effect of such a taxing system depend on two considerations: First - the rate of taxation; second - the basis of the valuation in taxation implies equality in the burden of taxation; and the equality of burden cannot exist without uniformity in the mode of the assessment as well as in the rate of taxation \*\*\* Is discriminatory taxation contravening express requirements of the State Constitution beyond redress in the courts of the United States their jurisdiction being properly invoked, when the discrimination results from divergent actions by different assessing boards whose assessments are not subject to any process of equalization by the State and where the direct results are the outcome not indeed of any express agreement among the officials concerned, but of intentional systematic and persistent undervaluation by one body of officials, presumably known to and ignored by the other body so that in effect the bodies are in concert?"

If it should be objected the decision in the Schramm Case in 269 Mo. only deals with assessing boards and not county courts, my answer is the court in the Schramm Case said (269 Mo. l.c. 495):

"Respondents concede that under this section the state board has the exclusive power to determine the minimum taxable value, and that no county or city board can reduce such minimum, but urge that such local boards can increase the same."

The court refuted this argument at length to show action of State Board

was exclusive, both as to raising or lowering assessed valuation and concluded the discussion as follows (269 Mo. 1c. 497):

"The power of taxation has been jealously hedged about and limited to the public needs; it rests upon necessity and is accordingly restricted. \*\*\* The rate fixed by the people and the valuation determined by the State Board on the property designated in Section 11357 (now 9863 R.S. Mo. 1929) decide the question of what is necessary.

This much is practically admitted by respondents through their concession that the State Board alone can fix the minimum taxable value."

The court holding that the power to fix the final assessed value is in the State Board, it necessarily thereby excludes the county court from having power to alter same after the State Board acts.

Applying the rule of statutory construction hereinbefore set out that courts will give laws and constitutions a sensible and not an absurd construction, so as to render same effective, I cannot see how a court could well hold any way except that county court has no power to compromise taxes by lowering assessed valuation fixed by the State Board of Equalization.

Butturning now from this phase of the discussion, the complete denial of the applicability herein of the Federal Court's decision in the Lead Company case and of the Anthony Case in 73 Mo. 43 L.C. is the construction placed by our Supreme Court on the Constitution and the Statute of Missouri.

In Trust Company vs Schramm, 269 Mo. 1.c. pp. 494-495, the Court said:

"The law clearly and expressly requires that for the purpose of valuation all property in the State regardless of where situate shall be dealt with in the same manner. For this purpose of valuation, the law decrees uniformity and one standard throughout the State and this without any regard whatever to local needs or difference in local conditions for it ordains that all property wherever situate shall be assessed at its true value.

In order to effectuate this command a State Board of Equalization has been provided, and its arm of authority extended to all parts of the state. It is a creature of the Constitution and by that instrument enjoined to adjust and equalize the value of property among the several counties of the State. \*\*\* Respondent concedes \*\*\* the State Board has the exclusive power to determine the minimum taxable value, and that no county or city board can reduce such minimum \*\*\*"

And in Trust Co. vs. Hill, 325 Mo. 1.c. 193, the court said:

"The assessment of property for taxation, though carried on simultaneously by county officers and boards, is for the purpose in part of affording basis for levy of a state tax; to that extent it is state assessment. As such it is subject to the jurisdiction of the State Board of Equalization, a State Agency created by the Constitution itself. The very fact that the Constitution sets up such a tribunal as the State Board of Equalization demonstrates that it was not the intent of the framers of that instrument that the assessment of property for taxation should be beyond the pale of state supervision and control."

The above is the last expression of the Supreme Court of our state declaring the State Board of Equalization has the exclusive authority to fix the final valuation for taxation of all property in Missouri.

If the Southern Ry. vs. Anthony, 73 Mo. ever was an authority in Missouri authorizing County Courts to raise or lower the assessed valuation fixed by the State Board of Equalization, the decision cited above in the 323 and the Schramm case in 269 Mo. overrules the Anthony case, in my opinion.

The construction given Section 36, Article IV, Missouri Constitution, and Section 9946, R.S. Mo. 1929 by the Federal Court would place the valuation of property in the County Court and in city councils and beyond the pale of the State Board of Equalization and the Supreme Court said in 323 Mo., l.c. 193 this cannot be done.

The construction of the Federal Court nullifies the constitutional provision first as to uniformity of taxation, and, second, the provision of the Constitution creating and empowering the State Board of Equalization to fix final valuation for taxation purposes. Our court said in the Schramm case all taxing officials' acts after State Board finally fixes assessed values are administrative acts only.

The Federal Court should accept the construction of our State Supreme Court placed on our Constitution and Statutes. Of course, discrimination within the meaning of the Federal Supreme Court if cases can be shown to exist as a result of methods of administering our system of taxation authorizes on that ground the Federal Courts can in an equitable suit to intervene to protect constitutional rights invaded.

For reasons above set forth, it is my opinion your county court cannot by virtue of its power as Agent of the County under Section 9946 and Section 36, Article IV, State Constitution, compromise the taxes of the Fuel Corporation. In the Federal case in 295 Mo. 305, referred to by you, the court stressed the fact the County Court's power came from Section 36, Article IV, State Constitution. Equally, the power of the State Board of Equalization to make the final assessment comes from Section 18, Article X of the State Constitution.

You also ask my opinion as to whether or not your County Court can if they believe an assessment is erroneous and excessive, make a valid agreement with the taxpayer under Section 9946, R.S. of No. 1929. I assume you mean to ask if under such conditions your County Court could lower the assessed valuation fixed by the State Board of Equalization and compromise the taxes with the taxpayer and in that assumption I answer in my opinion your court could not make and carry out such an agreement.

Long years ago our Supreme Court held in State ex rel v. Western Union Company, 165 Mo. 502, a mere over-valuation in assessing property is no ground for relief.

Very respectfully yours,

ECC:AH

EDWARD C. CROW

APPROVED:

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ATTORNEY GENERAL