ROADS: Taxability of public roads and inclusion of land on which such roads are located in Assessor's books.

11-30

November 27, 1934.

FILED 5

Hon. W. A. Bassman,
Assessor of Cole County,
Jefferson City, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of November 14, 1934, such request being in the following terms:

> "I would like to have your opinion as to whether the acreage deeded to the State of Missouri for highway purposes should be deducted from the farms and if so should it be carried on the tax books in the name of the State. In some instances a Warranty deed is given and in others a right-of-way. Should both be treated in the same manner? I would also like to know if farm-to-market road deeds are in the same class as the State highways."

I

PUBLIC ROADS NOT TAXABLE

Where land is conveyed to the State or to a county or a municipality for use as a public road, whether by warranty deed, quit-claim deed or deed of the right of way, such property, so long as it is used as a public highway, is exempt from taxation under the Constitution of Missouri, Article X, Section 6, which provides in part as follows:

> "The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation."

It is possible that upon the abandonment or vacation of the public highway, the land so used might again become private property. Compare State v. Culver, 65 Mo. 507 (1877) where the Court at page 509 says:

> "There can be no question but that defendant, as the owner of the land over which the road passed, retained the fee and all rights of property not inconsistent with the public use of it, and if the use of the highway in question had been abandoned or lost he would be entitled to his original unencumbered dominion over it."

In such an event the exemption would, of course, cease.

II

LAND USED AS PUBLIC HIGHWAY NOT TO BE CARRIED ON TAX BOOKS.

Land which because of its use as a public highway is exempt under the Constitution from taxation need not be carried on the Assessor's books, which under the law are only to contain taxable property. This is demonstrated by R. S. Missouri, 1929, Section 9778, which provides as follows:

> "The assessor, on examination and comparison of the list of property delivered by individuals, and the list of lands furnished by the secretary of state, and said maps and plats, and after diligent efforts for ascertaining all taxable property in his county, shall make a complete list of all the taxable property in his county, to be called the assessor's book."

The above conclusions would apply to all public roads. Where a private road exists the owner of the land would be liable to pay taxes on the land constituting such road even though the owner of adjoining land might have an easement of necessity or otherwise over such road.

In conclusion it is our opinion that land which has been conveyed by any kind of deed to the State, a county or a municipality, for use as a public road, is exempt from taxation so long as it is used as a public road, and that such land while so used is not to be carried on the books of the Assessor of the county in which such land is situated.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General