

DRAINAGE DISTRICTS: TAXATION: CONSTITUTION:

Lands purchased by a drainage district at a tax sale or redeemed from taxes, are not exempt from the payment of general taxes under Section 6, Article X of the Constitution of Missouri.

10-2 October 1, 1934

This op is wrong See 111 SW 2d 151

Honorable A. Ives Reid
Treasurer and Ex-officio Collector
Harrisonville
Missouri



Dear Sir:

This Department acknowledges receipt of your letter dated September 12, 1934, as follows:

"We have some land in our County which is in the Drainage District, that the Drainage Board has taken title to or is in suit to collect Drainage Tax.

The Attorney and Sec'y of the Drainage Dist. claim this property is not subject to tax sale.

Will you please give me your opinion relative to this matter."

1.

By the provisions of Section 10766 Revised Statutes Missouri 1929, authority is given the Board of Supervisors of a drainage district, organized in circuit court in this state, to purchase lands at sales of lands in the district for drainage taxes and to redeem lands sold for general taxes when the district is not made a party to a suit wherein a sale is had for general taxes. The section of the statutes referred to, in part, is as follows:

"To protect said lien of said drainage taxes upon the lands and other property against which said taxes shall be levied, in any case where delinquent lands are offered for sale for such delinquent taxes, and the amount of the tax due, together with interest, cost, and penalties is not bid for the same, the board of supervisors shall have authority to bid or cause to be bid, not to exceed the whole amount due thereon, as aforesaid, in the name of the drainage district, and in case such bid is the highest bid, the sheriff shall sell and convey such lands to such drainage district, and such lands shall thereupon become the property of the drainage district, and may be held, disposed of, and conveyed by the board of supervisors at such price and on such terms, as in the discretion of the board of supervisors may be to the best interest of the district."

And further,

"The board of supervisors shall also have authority to protect the lien of the drainage district for drainage taxes by paying the general, state, county, school and road taxes, and in case the lien of the state for such general, state, county, school and road taxes is foreclosed, and the land, or other property, sold for such general taxes, and the said drainage district is not made a party to the proceedings foreclosing the said lien for such general taxes, the said board of supervisors shall be authorized at any time within one year after said sale to redeem such lands, by paying not to exceed the whole amount of such taxes, together with penalties and costs accrued thereon."

As to what funds may be used for making such purchases or redemptions is not directly disclosed.

Section 10752 Revised Statutes Missouri 1929, authorizes the board of supervisors of any drainage district, organized under the provisions of Article I of Chapter 64, to levy a uniform tax of not more than fifty cents per acre upon each acre of land in the district, to be used for the purpose of paying expenses incurred or to be incurred in organizing said district, making surveys and to pay other expenses necessary to be incurred before the board shall be empowered to pay the total costs of works and improvements in the district.

Section 10759 Revised Statutes Missouri 1929, authorizes the board of supervisors of drainage districts organized in circuit court to levy a tax on the lands, railroad and other property in a drainage district at such sums as may be found necessary by the board of supervisors to pay the costs of the completion of the proposed works and improvements, and in carrying out the objects of the district plus ten per cent of said total amount for emergencies, the tax to be spread over each tract of land or other property in the district in proportion to the benefits assessed.

Section 10788 authorizes the board of supervisors of such drainage districts to issue bonds in an amount not to exceed ninety per cent of the total amount of the taxes levied, and payable out of the money derived from the aforesaid taxes. A sufficient amount of such drainage tax when collected shall be preserved in a separate fund for the payment of the principal of and interest on such bonds, and for no other purpose. It being provided in the latter section that:

"The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the drainage works and improvements and such costs, expenses, fees and salaries as may be authorized by law and used for no other purpose."

2.

A solution of your question, of course, depends on

a proper construction of Section 6 of Article X of the Constitution of the State of Missouri, which section reads:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

Section 10743 Revised Statutes 1929, as amended by Laws 1933, page 217, provides that drainage districts may be formed

"* * * for the purpose of having such lands and other property reclaimed and protected from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to public health, convenience or welfare, or of public utility or benefit, by drainage or otherwise,* * *"

The latter section refers to the organization of drainage districts by circuit courts. Substantially the same language is used in Section 10902 Revised Statutes 1929 in reference to the organization of levee districts.

By virtue of the provisions of Article II, Chapter 64, Revised Statutes 1929, county courts may organize, incorporate and establish drainage districts.

"When the same is necessary to drain or protect any land or other property."

It has been held in this state that drainage districts are municipal corporations within the meaning of the constitutional provision above set out. Such cases will be referred to later. Perhaps as clear a definition as has been stated by the Supreme Court of this State as to the character and functions of a drainage district, is to be found in an opinion by Graves, J., in State ex rel. Hausgen v. Allen 298 Mo. 448, 458, where it was said:

"The functions exercised by drainage districts being purely governmental in character, the question is whether or not they are liable for negligence of their agents in the prosecution of the reclamation plan, where damages are sought by one whose lands are within the district. These districts have no private or proprietary functions to perform, and in this their powers are not as broad as cities, towns and villages. Their functions are governmental and public. The very foundation stone of their structure is public necessity, or public convenience, or public welfare. (Sec.4378, R. S. 1919)."

We may have a better view if we distinguish clearly between proprietary rights and governmental functions. Defining governmental functions or purposes, in the City of Fort Worth v. Siggins 5 S. W. (2nd) 761, 763, the Court of Appeals of Texas said:

"It will be observed, to be governmental the purposes of the act must be 'essentially public, purposes pertaining to the administration of general laws made to enforce the general policy of the state'; while the powers which are classed as proprietary are such as are 'not of this character, voluntarily assumed, powers intended for the private advantage and benefit of the locality and its inhabitants.'"

Making the distinction between the two terms and speaking of the management of its parks by a city, in *State ex rel. Welsh v. Darling* 88 A. L. R. 218, 227, it is said, speaking of such control,

"No revenue is received therefrom. In the management and control of its parks, municipalities, under the rule prevailing in this state, act in a purely governmental capacity."

And further,

"A different rule prevails in many jurisdictions, at least where the municipalities operate their parks and other similar property for revenue, and therefore in a proprietary capacity."

The Supreme Court of this State, en banc, in *Auslander v. City of St. Louis* 56 S. W. (2d) 778, 780, discussing the functions of a city in reference to its liability for tort, said:

"Municipal corporations are considered in two aspects. One where their functions relate to the corporate interests only, and the other where they discharge certain governmental functions. The authority for the latter is characterized as 'quasi delegated sovereignty for the preservation of the public peace and safety and the prevention of crime.' In performing the duties relating solely to its corporate character, the city is liable for injuries caused by negligence of its agents; in performing duties relative to the latter or governmental character for the public good, it is not liable."

And further, on the same page:

"* * * It is generally held that the exercise of the police powers by municipal corporations is a governmental function,

acting in their governmental capacity.
* * * The police regulations of a city are not made and enforced in the interest of the city in its corporate capacity, but in the interest of the public."

The purchase of lands by a drainage district at a tax sale could have no relation to drainage, public health or welfare, and therefore no relation to the governmental functions of the district, except insofar as it incidentally might provide means of payment of works and improvements in the district. We know as a matter of common knowledge that bonds are commonly issued upon the organization of all drainage districts in this state, and the same sold for the purpose of paying for the improvements constructed in the district by reason of its organization, so that ordinarily funds would be on hand with which to pay for the carrying out of the plan for reclamation. In the last analysis the only purpose in purchasing the lands in the district at a sale to pay its taxes would be for the use and benefit of the holders of the bonds, or perhaps other landowners in the district who had not paid out the amount of their assessed benefits by way of taxes. Hence, we think that when a drainage district acquires land at a sale for the payment of its taxes, the district is acting in a proprietary capacity rather than in the exercise of governmental functions, and according to the decisions hereinafter referred to it is only property used in the exercise of its governmental functions that is exempt from taxation under the constitutional provision above set out.

In the case of *State ex rel. Caldwell v. Little River Drainage District* 291 Mo. 72, the court had under consideration a suit wherein it was the purpose to enforce the collection of state and county taxes attempted to be assessed and levied on office furniture, books, engineering instruments and office equipment, owned and used by the drainage district exclusively in carrying on and conducting its work as a drainage district. The court at page 77 of the opinion stated:

"The only question presented for determination here is whether such property is exempt from taxation under Section 6 of Article X of the Constitution and its correlated statute Section 11335, Revised Statutes 1909."

Disposing of the case at page 81 of the opinion the court said:

"Our conclusion is that the defendant is a municipal corporation within the meaning of that term as used in the provision of the Constitution dealing with tax-exemption, and that its property, used exclusively in the discharge of its prescribed governmental function, is exempt from taxation."

State ex rel. Kinder v. Little River Drainage District 291 Mo. 267, involved an attempt to collect taxes levied against the right-of-ways and holding basins of the defendant drainage district. Again, Section 6 of Article X of the Constitution was necessarily involved. The point was made that the property sought to be taxed was not all used for public purposes and that at least a part of it was subject to taxation. The court at page 281 of the opinion said:

"If the containing basin were necessary to store the surplus water in flood time, then the district was obliged to acquire such land as would be overflowed by such surplus water.

The evidence shows the land described in the petition, except that used in the right-of-way, was acquired for that purpose; strictly the purpose for which the district was formed - to protect the district from the effects of water, and the health, welfare and prosperity of a large community - depended upon the proper maintenance of the facilities thus provided for taking care of the water. It is in evidence that all this land included in the petition was subject to overflow. If at times some of the land included in the west basin was not overflowed and could be cultivated that would not affect the propriety of acquiring it to prevent embarrassment by

its belonging to other persons. It would be the duty of the district to husband its resources in that way and obtain any revenue it could by the use of such land, and such use would not subject the land to taxation."

Neither of the above opinions make reference to the other, one being decided in Division Number One, the other in Division Number Two. It is clear that in both cases the court was careful to confine what it said to property used exclusively in the discharge of governmental functions; doubtless having in mind that some such a situation as is now presented might arise in the future.

Commenting on previous decisions of the Supreme Court of this State in defining drainage districts as municipal corporations, in *State ex rel. Hausgen v. Allen*, supra, page 458, it is said:

"It is true that in the other cases there are statements likening drainage districts to, or calling them, municipal corporations. The questions pressed in those cases did not call for a close comparison of strict municipal corporations with drainage districts. But be that as it may, these later cases of *Caldwell* and *Kinder* were the ones controlling upon the Court of Appeals, because the latest expressions of this court, and from both divisions thereof. To the cases last mentioned may be added *In re Birmingham Drainage District*, 274 Mo. 1. c. 151 et seq."

In *Wilson v. Drainage and Levee District* 237 Mo. 39, the court was considering the question of whether or not a drainage district was a political subdivision of the State, so that an appeal by it would lie to the Supreme Court of this State. On that point at page 48 of the opinion the court said:

"We are of the opinion that the words, 'other political subdivisions of the State,' as used in section 12, article 6, following as they do, the word 'county,' mean such political subdivisions as may be created having powers similar to those of a county, and do not refer to townships, school districts, levee districts, drainage districts, and such like minor political subdivisions of the State. We are thereof of the opinion that the defendant is not a political subdivision of the State in a jurisdictional sense and within the meaning of section 12, article 6 of the Constitution."

The opinion last quoted from does not serve any particular purpose so far as the question at hand is concerned, except that it does recognize a distinction between a county as a political municipality and a drainage district as such.

The only purpose in a drainage district buying land within its boundaries and taking title thereto or redeeming same from a sale for general taxes, would be that the cost of the organization and the cost of carrying out the plan of reclamation might be paid, or that such land might thereafter be sold and the proceeds thereof applied as a payment on the bonded indebtedness of the district. If the costs of carrying out the plan for reclamation or the bond issue was paid by other means, then, unless used for maintenance purposes such land would be sold and the proceeds thereof divided ratably between the land-owners in the district so that, at least to a degree, the district would hold such purchased land in trust for the creditors of or land-owners in the district. On this point we call attention to the case of *St. Louis v. Wenker* 145 Mo. 230, which case involved an attempt to assess property held by the city as trustee under the will of Bryan Mullanphy. It was contended that the property so held was exempt from taxation under the constitutional

provision above quoted. The court at page 238 of the opinion said:

"We think that the property of a county or city exempted from taxation by the constitutional provisions hereinbefore quoted, is that of which such county or city is the beneficial owner, which is held by it 'for its own use' and not merely in trust. It does not include that in which the only interest of the municipality is as trustee. We therefore hold that this real estate is not exempt from taxation."

As to funds unexpended by a drainage district upon the completion of the improvements under its plan for reclamation, in 19 C. J. 761, it is stated:

"Unexpended funds of a drainage district are trust funds and, in the absence of some statutory provision therefor, equity has jurisdiction to distribute them among the landowners of the district, but the landowners are not entitled to the return of such funds if there is a future use for them. Where a portion of the benefits found to have resulted from the construction of a ditch was never assessed or called for, the amount so uncollected cannot be collected and applied to new work."

We can well conceive a situation, if the lands so purchased by drainage districts are exempt from general taxes, where a drainage district would acquire a large

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acreage of land, land values soar in price so that the bonded indebtedness of the district might be discharged and large tracts of valuable lands be held by the district to be sold and the proceeds thereof distributed to the landowners in the district, while such lands during the time they were held by the district were free from assessment for general taxes and while counties suffered on account of lack of revenue and perhaps schools caused to be closed for the same reason. We do not believe that the opportunity for such a situation arising was intended to be provided by the framers of the Constitution.

CONCLUSION

Because of the importance of the question involved, we have re-examined the law thereon and have reached the conclusion that the opinion of this department dated December 29, 1933 was wrong.

We are of the opinion that lands purchased by a drainage district at a tax sale or lands redeemed on a sale for general taxes by a district, are not exempt from taxation under the provisions of Section 6 of Article X of the Constitution of the State of Missouri.

Yours very truly,

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Assistant Attorney General.

APPROVED;

ROY EGGYTRICK
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GL:LC