

TAXATION: Municipalities may tax real estate within the city limits regardless of acreage.

8-13  
August 8, 1934.



Honorable L. W. Thurman  
City Clerk  
Southwest City, Missouri

Dear Sir:

This Department is in receipt of your letter wherein you state as follows:

"Will you please furnish the city of Southwest City, Mo., an opinion whether or not there is any law on the statutes books whereas the city can not collect city taxes on real estate within the city limits where the acreage is over twenty acres.

"We have a particular case in the city where the individual has an acreage of over twenty acres who claims that the city cannot collect city taxes on the real estate. We do not feel that this man is entitled to any more favors than any one else, should the state laws uphold us, it is our intentions to make a test case out of this certain tract as we have a city ordinance which gives us the right to go ahead and collect tax. Besides we have other tracts of land acreage and these persons have not made any kick."

Section 6, of Article X, page 135, Missouri Constitution sets out the property exempt from taxation and reads as follows:

"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 of one mile of 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 7, of Article X, page 136, provides that all other exemptions are void and states as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

The Legislature in the enactment of Section 9743 R. S. 1929, provided in part that:

"\* \* \* 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, when the same are used exclusively for religious worship, for schools or for purposes purely charitable, shall be exempted from taxation for state, county or local purposes."

Section 7013 R. S. No. 1929 provides that boards in cities of the fourth class shall not exempt any person from any tax and reads as follows:

"The mayor and board of aldermen shall have no power to release any person from the payment of any tax, or exempt any person from any burden imposed by law."

In the case of State v. Hemenway 273 Mo. 187; 198 S. W. 825, 1. c. 828, an action was brought by the State on behalf of the collector of the revenue of Glasgow, a city of the fourth class, for delinquent taxes assessed against the defendant's land, located in said city. By the laws of 1852-53, p. 351, lands never divided into lots were held exempt but the court held that since the Legislature had inherent power by permitting the city of Glasgow to become a city of the fourth class that defendant's

land, though divided into lots and always used agriculturally were subject to the municipal tax. The court in its opinion said:

"Taking a retrospective view of the situation, in connection with the Constitutions, statutes, and authorities heretofore mentioned, we deduce the following conclusions: (a) That the act of 1853, which incorporated defendant's property within the boundaries of Glasgow and exempted the same from taxation, was valid at the time of its enactment, and that said exemption continued, without question, until, at least, to the time of the adoption of the Constitution of 1865. (b) That, when the above statute of 1853 was enacted, the Legislature had the inherent right--if it had seen fit to exercise it--to include defendant's property within the boundaries of said city, with or without her consent, and to have subjected the same to the payment of city taxes thereafter. (c) That the Legislature of 1853 made no express or implied agreement with defendant, by which it obligated itself to continue said exemption for all time to come. On the contrary, it had the legal right to amend said act of 1853, after its passage, during the same session, or at any subsequent session, and to have subjected defendant's property therein to the payment of city taxes. (d) That, after Glasgow became a city of the fourth class, the property of defendant therein became subject to taxation, just as it would have been had said city changed from a village to a city of the fourth class. In other words, defendant's property having been included by the Legislature, in 1853, within the boundaries of Glasgow, continued therein, after the later became a city of the fourth class, and subject to the general law of taxation relating to cities of such class.

On page 829 the court said:

"We are of the opinion that when the city of Glasgow elected to become, and did become, a city of the fourth class, defendant's pro-

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perty contained within the boundaries thereof became liable for the payment of the taxes sued for in this action."

And on page 330 the court further said:

"So far as the record discloses, defendant's real estate has been within the corporate limits of Glasgow since 1853, and she has never paid any city taxes thereon. She has received whatever benefits flowed from her relationship to the city, and ought not to complain at this late day, in being called upon to bear some of the city's burdens. The above conclusion is in accord with the expressed views of this and other courts."

#### CONCLUSION.

In view of the foregoing we are of the opinion that a city can collect city taxes on real estate within the city limits regardless of acreage, and further that this right cannot be defeated on the theory that the exemption was an inducement for bringing the land within the city limits.

As stated in the case of State v. Hemenway, supra, "Even if the Legislature had, by enactment, authorized a city like Glasgow to take in and exempt from taxation property like defendant's, the exemptions would be unavailing because of the provisions of our Constitution."

The city of Southwest City, Missouri, is a city of the fourth class, and since defendant's property is contained within the boundaries of the city it is liable for the payment of taxes regardless of the acreage.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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