

TAXATION: Board of Supervisors of Drainage District cannot delegate County Collector to remit penalties.

8-22  
August 20, 1935.



Mr. G. R. Breidenstein,  
Prosecuting Attorney,  
Clark County,  
Kahoka, Missouri.

Dear Sir:

We wish to acknowledge your recent request for an opinion reading as follows:

"I would like to have the opinion of your office in regard to the following question:

"A Drainage District after finding that Senate Bill 143, as passed by the recent legislature, did not apply to special assessments of Drainage Districts so as to provide for the remission of penalties on such assessments past due, votes by its Board of Directors or Supervisors 'that all penalties and interest on all assessments due said Drainage District, delinquent for the year 1934 and prior years shall be computed after December 31st, 1934 on the same penalty and interest basis as the assessments delinquent for the year 1934 until paid.'

"Does this authorize the County Collector or Revenue to receive and receipt for such prior delinquent assessments due Drainage Districts, and remit the penalty and interest as provided by said Drainage District thru its Board of Supervisors?"

The question that first arises is whether, the Legislature having failed to provide for remission of penalties on assessments due, a drainage district can accomplish same by a vote of the supervisors of the district.

Our court in the case of State ex rel. McKittrick v. Bair, 63 S. W. (2d) 64, l. c. 66, in holding that the Legislature has a right to remit penalties imposed by law, said:

"In this situation, the legislative power to remit the penalties involved here is well settled in principle. In Maryland v. B. & O. R. R. Co., 3 How. 534, 11 L. Ed. 714, it is held that the Legislature has a right to remit penalties imposed by law. 'In this aspect of the case,' the court said at page 552 of 3 How., 11 L. Ed. 714, 'and upon this construction of the act of assembly, we do not understand that the right of the state to release it is disputed. Certainly the power to do so is too well settled to admit of controversy.'"

Having determined the power of the Legislature to remit penalties, the question arises whether the board may remit penalties without legislative sanction, as we find no authority in our statutes giving supervisors of a drainage district such power.

61 C. J. 1493, in dealing with remission of penalties, says:

"So, also, the legislature having power to remit penalties may authorize or require local officers or boards to remit penalties, but no such power exists in any board or officer unless conferred by statute.

In the case of Hutton v. McCleskey, (Ark.) 200 S. W. 1032, l. c. 1033, the court in holding that the Arkansas State Tax Commission did not have the power to remit penalties imposed by statute, said:

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"It is too plain for argument that the state tax commission possesses no such power as it attempted to exercise in this instance of relieving delinquent property owners from the penalty imposed by the statute. The powers of the tax commission are limited entirely to the fixing of values, and do not extend to the relief of penalties imposed by statute."

It is true that the above case deals with remission of penalties on "taxes", and that generally speaking "taxes" do not include special benefit assessments. However, we are of the opinion that the principle that no power exists in a board to remit penalties unless conferred by statute applies as well to assessments as it does to taxes.

Having come to the conclusion that the board of supervisors lacks the authority to remit penalties on assessments due the drainage district, it is clear that it can not delegate the county collector to receive and receipt for such delinquent assessments, and remit the penalties.

Respectfully submitted,

WM. ORR SAWYERS,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

WOS:

MW:HR