

TAXATION: Senate Bill 94 not applicable to collection of levee district assessments.

3-22
March 22, 1935.



Hon. J. S. Taylor
Treasurer and Ex-Officio
Collector of Bates County
Butler, Missouri

Dear Mr. Taylor:

Acknowledgment is herewith made of your request for an opinion of this office reading as follows:

"Since I did not receive your opinion on the advertising of drainage land in the Grand River Drainage District until too late to sell land on the first Monday in November, I am wanting to know if land advertised since that time can be sold now, or will it have to go over until November next."

I have made diligent search of the records of this office but fail to find any opinion directed to you respecting the advertisement of drainage land in the Grand River District for delinquent taxes. I assume from your inquiry that it respects the collection of taxes or more properly speaking, benefit assessments due the Grand River Drainage District.

I.

DRAINAGE ASSESSMENTS NOT
COLLECTIBLE UNDER PROVISIONS
OF SENATE BILL 94, PAGE 425
LAWS OF MISSOURI, 1933.

Senate Bill 94 as above cited was not intended to change or vary the means of collecting delinquent drainage assessments. Section 9963d, page 448, Laws of Missouri 1933, provides as follows:

"Nothing in this act contained shall be construed to authorize a personal judgment against any owner of any land or lot, or of any interest therein, for any real estate tax levied and/or assessed against such land or lot, nor shall this act be so construed as to change in any manner whatsoever the method of mode now or that may hereafter be provided by law for the collection of drainage and/or levee assessments, or other special assessments."

By the provisions of this section the Legislature has specifically stated that this law was not to effect the mode of collecting delinquent levee and drainage assessments as existed at the time of the adoption of this law, therefore, these assessments are to be collected by suit as heretofore.

The Supreme Court of Missouri has passed upon this feature of the Jones Munger Law in the case of St. John Levee and Drainage District vs. Pillman, 76 S. W. (2d) 1095. In this case Judge Westhues, speaking for the Court stated, l. c. 1096:

"In the act of 1933, no reference whatever was made to section 10927 or its various provisions. It will, therefore, be presumed that section 10927 was not repealed, unless we are authorized to say that the Legislature meant to repeal the provisions of this section by implication. We find nothing in the act which indicates that the Legislature intended to change the procedure for the enforcement of levee and drainage taxes. On the contrary, the act itself in specific terms specifies that the provisions thereof shall not apply to the enforcement of such taxes. Note the reading of the latter part of the section 9963d, page 448, Laws 1933 (Mo. St. Ann. Sec. 9963d, p. 8007): '* * * nor shall this act be so construed as to change in any manner whatsoever the method or mode now or that may hereafter be provided by law for the collection of drainage and/or levee assessments, or other special assessments.'

So we have here a specific direction, by the lawmaking body, that the act changing the procedure with reference to the enforcement of state

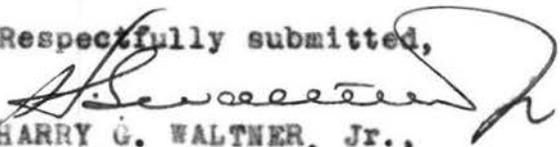
taxes shall not be so construed as to apply to the enforcement of drainage and levee taxes. The Legislature evidently had in mind that section 10927 and other sections prescribed certain procedure for the enforcement of these taxes, and that by reference a part only of the provisions of the general revenue act had been made a part of the levee district and other acts. So, in order to avoid confusion on the subject, the Legislature left the procedure of the enforcement of levee taxes the same as before, and a reading of the new law clearly indicates that the Legislature intended its provisions to apply only to the state and county revenue."

In view of the foregoing decision there can be little doubt as to the proper method of your procedure.

CONCLUSION.

It is therefore the opinion of this office that drainage assessments of the Grand River Drainage District cannot be enforced under the provisions of Senate Bill 94 and that the provisions of that law are not applicable to the collection of such assessments, but are to be collected under the provisions of the law as existed prior to the adoption of Senate Bill 94.

Respectfully submitted,


HARRY C. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

HGW:MM