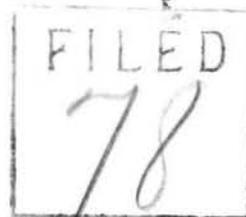


OFFICERS--SOLDIERS: The personal and real property of members of the R. O. T. C. is subject to taxation in this State.

September 17, 1936

9-17



Honorable William H. Sapp
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Sir:

We acknowledge receipt of your letter of September 9, 1936, and the enclosed letter from the State Auditor. Your request reads as follows:

"The letter herewith enclosed is self-explanatory. It seems that the city assessor, who is also deputy county assessor, wishes to know whether or not he should assess the personal property belonging to members of the R. O. T. C. "

Article X, Section 6, Missouri Constitution provides:

"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."

Article X, Section 7, Missouri Constitution provides:

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

Section 9742 R. S. Mo. 1929, provides:

"For the support of the government of the state, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section."

Section 9743 R. S. Mo. 1929 provides in part:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; * * *."

Section 9743, supra, is silent as to exempting the personal property of members of the R. O. T. C. Exemption of United States soldiers and United States property does not exempt the personal property of the soldier. At best it could only exempt the soldier from a poll tax. In an opinion rendered by this department, July 7, 1933, to State Auditor Forrest Smith, we held that even where the Legislature exempts property leased by the State for military purposes, such an act of the Legislature is unconstitutional because it purports to make statutory exemptions not permitted in the Constitution.

In State ex rel. Union Electric Light and Power Company v. Baker, 293 S. W. 399; 316 No. 853, 1. c.858, the Supreme Court said:

"It is the well settled policy of our law that taxes shall be levied and collected for public purposes on all property within the territorial jurisdiction of the State, except that expressly enumerated as exempt."

In the City of Kansas v. The Kansas City Medical College, 20 S. W. 35; 111 Mo. 141, the Supreme Court held that the constitutional exemption to a medical college building did not extend to personal property used in the building and devoted to school purposes.

Section 9756 R. S. Mo. 1929, provides in part:

"The assessor or his deputy or deputies shall between the first day of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof, * * * *."

Section 9745 R. S. Mo. 1929, provides:

"All personal property of whatever nature and character, situate in a county other than the one in which the owner resides, shall be assessed in the county where the owner resides, except as otherwise provided by section 9763; and all notes, bonds and other evidences of debt made taxable by the laws of this state, held in any state or territory other than that in which the owner resides, shall be assessed in the county where the owner resides; and the owner, in listing, shall specifically state in what county, state, or territory it is situate or held.

CONCLUSION.

The assessors duty is to assess all personal property in the State. Of course he is to assess only taxable property. The Constitution enumerates the property exempt from taxation. The Supreme Court has

held consistently that the Legislature cannot exempt property not exempted by the Constitution. Since the Legislature suffers this limitation, it follows that the assessor is also guided in his duties by constitutional exemptions, and all legislative exemptions which be constitutional.

It is true that United States property, pursuant to the Constitution and Statutes, is not subject to taxation in this State. It does not follow from this exemption that the property of a soldier is thus exempted. Federal property and individual property are not confused because an individual becomes a soldier. The soldier's property, in his possession, care and custody, which is supplied by the Federal Government remains the property of the Federal Government and is not subject to taxation in this State. The soldier's property which the Federal Government gives to him outright, or which he accumulates by his initiative belong to him individually.

The cases in this State hold that before any exemption from a tax on property can be asserted with legal sanction, said exemption must be specifically enumerated in the Constitution and Statutes, and where enumerated in the Statutes the exemption must follow the Constitution.

We find no constitutional or statutory provision expressly authorizing an exemption of taxation on either real or personal property belonging to members of the Reserve Officers Training Corp. There is no more reason for such an exemption than for the exemption of the personal property of a medical school used exclusively for school purposes.

This department is of the opinion that the assessor's duty is to assess all property in the State including the personal and real property belonging to member of the Reserve Officers Training Corp.

Respectfully submitted

APPROVED:

WM. ORR SAWYERS
Assistant Attorney General.

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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