

TAXATION: Section 9951 Laws of Missouri 1933, page 428, relating to sale of property for delinquent taxes is applicable to Jackson County, Missouri.

September 1, 1937

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Mr. John B. Pew
County Counselor
624 Rialto Building
Kansas City, Missouri

Dear Sir:

This department is in receipt of your request for an opinion as to the following:

"In conformity with Sec. 9960-D of the chapter pertaining to taxation and revenue in the Session Acts of 1933, at page 443, we are writing you for your decision on a question arising as to the interpretation of Sec. 9951 of said act found on page 428, Session Acts of 1933.

"Jackson County has not to date offered any property for sale under the provisions of this revenue act but to prevent the 5-year limitation from running it will be necessary this November for the county to offer for sale property on which the 1932 taxes have not been paid.

"Nearly all of these unpaid taxes are small in amount. The last time the city limits of this city were extended we did a big job of it. The territorial area of Kansas City is about equal to that of St. Louis. In this extension we took in many dairy farms and a tremendous lot of property very rough in typography.

Unfortunately a great deal of this property has been improvidently platted. I may add that the large area taken in was mainly for the purpose of getting within the city limits property with drainage toward the Missouri River so that the city might formulate a plan of a gravity sewer sufficient for all time. However, this large extension has required the Assessor and Collector to carry on their books thousands of lots that are now abandoned. Subsequently some one may become interested in these lots.

"One or two additions are in the Missouri River and yet for years there are pages of records in these two offices assessing and keeping track of the back taxes on these additions in the river.

"As Counselor to the County Court, I would like to advise, under authority of Sec. 9951, that our County Auditor, Collector and Assessor may, acting as a commission as provided in this section, recommend that vast numbers of these tracts of land are not worth the taxes or that the taxes are too small to justify the expense of sale and that for that reason taxes for the year 1932 may be abated and left out of the sale. Such would save a tremendous lot of cost in clerk hire and in advertising expense. No bids would be received on any of this property.

"The substantive part of this section which sets out the law, makes it apply specifically to a county having therein a city of 300,000 inhabitants. That provision includes Jackson County, but

near the end of the section it says that the 'tax bills shall be cancelled by the comptroller of such city.'

"By reason of this provision, our local authorities are inclined to feel that this entire section relates to St. Louis only. But the concluding sentence in the section is as follows:

'In the City of St. Louis such commission shall be composed of the Comptroller, Mayor and the President of a Board of Assessors.'

"Thus not only does the section in the substantive part thereof provide specifically that it shall include Jackson County, but the closing sentence likewise discloses that it is intended to cover St. Louis as well as other counties and could not therefore have been intended exclusively for St. Louis.

"It is my view that wherein it provides that the tax bills shall be cancelled by the comptroller means where there is a comptroller. If in a county like ours, where the city comptroller has nothing to do with the county books; it is my view that the County Court, in whom is vested by the constitution the power and authority to transact all county business, this court would undoubtedly have the right, upon the recommendation of this commission to enter an order for the reasons set out, abating the taxes for the year 1932 and directing the County Collector to abate such taxes and satisfy the

record for that year.

"If you will kindly confer with the Attorney-General and if he feels that these views I express are correct or upon any other interpretation and direction from your commission, under the advice of the Attorney-General, we can cancel some of these taxes, it will be highly profitable for us to do so.

"We are working daily upon plans for our sale and would like to have your views upon this matter as early as convenient."

Section 9951, Laws of Missouri 1933, page 428, provides:

"Sec. 9951. Commission to examine back taxes. - At every annual settlement made by a collector of the revenue after this article shall take effect, in each city in this state which now has or which may hereafter have three hundred thousand (300,000) inhabitants or more, and in each county having therein or which may hereafter have therein a city having three hundred thousand (300,000) inhabitants or more, all delinquent real estate and delinquent personal tax lists and back tax bills for taxes on real estate and personal property shall be carefully examined by a commission to be composed of the auditor, collector and assessor, and if there appear thereon any back tax bills which have appeared thereon for a period of five years or more which, in the opinion of a majority of said commission, are too small to justify the expense of suit or foreclosure, or which are

against exempt property, or which are against property which is not worth the taxes, interest and cost, and cannot be compromised as provided by law, the same shall, upon order of such commission or a majority thereof, be stricken from such delinquent real estate or back tax books and the tax bills therefor cancelled by the comptroller of such city. In the City of St. Louis said commission shall be composed of the comptroller, mayor and the president of the board of assessors."

If the above statute be considered as applicable to the city of St. Louis only, the statute would be unconstitutional by reason of being in violation of Article 4, Section 53, of the Constitution of the State of Missouri. However, as we view the situation, there is no question but that this statute not only applies to St. Louis and St. Louis County, but also to Kansas City and Jackson County and to any other city or county that may hereafter have a population of 300,000 inhabitants.

In the first place, section 9951, Laws of Missouri 1933, page 428, is a new section passed by the General Assembly in 1933. The former section 9951, R. S. Mo. 1929, was repealed by section 1 of the present act. The present section 9951 enacted in 1933 specifically provides that it shall be applicable "in every city in this state which now has or which may hereafter have 300,000 inhabitants or more, and in every county having therein or which may hereafter have therein a city having 300,000 inhabitants or more." The express language of the statute itself, therefore, leaves no doubt but that the Legislature intended that it should apply to Jackson County and it is the use of this general language that gives validity to the Act and prevents it being purely local legislation.

"In other words, the class is fixed, but the counties that fall within it may change as their population fluctuates. That such legislation is not local is established by numerous decisions of

this court." Thomas v. Buchanan Co., 51 S. W. (2d) 95.

The only words in the section which might cast some doubt upon this construction of the intention of the Legislature in passing the act is to be found in the last two lines of the first sentence of said section, wherein it is said:

"and the tax bills therefor cancelled by the comptroller of such city."

Obviously this language cannot refer to Jackson County. However, we believe this to be merely a clerical omission on the part of the General Assembly, and it is our opinion that the words "collector of such County" may be read into section 9951 in place of the words "comptroller of such city" wherever necessary or applicable. In the case of State v. Koeln, 211 S. W. 31, l. c. 33, Judge Williams said:

"The correct rule here applicable is stated in 36 Cyc. 1126, as follows: 'Mere verbal inaccuracies or clerical errors in statutes in the use of words or numbers, or in grammar, spelling, or punctuation, will be corrected by the court whenever necessary to carry out the intention of the Legislature as gathered from the entire act.'"

This clerical error of omission is easily understandable when the history of the section is traced to its origin. Section 9951 undoubtedly has its origin in Laws of Missouri, 1913, page 741, which provides:

"Section 1. Certain bills to be cancelled by commission in certain counties and cities. At the first annual settlement made by a collector of the revenue after this act shall take effect, in each city in this state which now has or which may hereafter have three hundred

thousand inhabitants (300,000), or more, and in each county having therein or which may hereafter have therein a city having three hundred thousand (300,000) inhabitants or more, all delinquent real estate and delinquent personal tax lists and back tax bills for taxes on real estate and personal property shall be carefully examined by a commission to be composed of the auditor, collector and assessor, and if there appear thereon any back tax bills prior to the year 1908 which, in the opinion of a majority of said commission are too small to justify the expense of suit, or which are against exempt property, or which are against property which is not worth the taxes, interest and costs, and cannot be compromised as provided by law, the same shall, upon order of such commission or a majority thereof, be stricken from such delinquent real estate or back tax books and the tax bill therefor canceled by the comptroller of such city. In the city of St. Louis said commission shall be composed of the comptroller, mayor and president of the board of assessors."

At the time this section was passed, in 1913,

there was only one city to which the law could possibly apply, namely St. Louis, for it was the only city at that time having a population of 300,000 inhabitants or more. Nor was there a county at that time having a population of 300,000 inhabitants or more. Consequently, while the Legislature undoubtedly passed a law at that time for the benefit of St. Louis only, nevertheless in order that the law might be constitutional, they provided that the law should be applicable to any city or county which might have or might thereafter have 300,000 inhabitants or more. However, having in mind when the law was being formulated that there was only one city to which the law could possibly apply, it is quite natural that in providing the necessary procedure, the Legislature should provide that the tax bills should be cancelled by the comptroller of such city. This language can be traced from 1913 to 1933, though from the moment the population of Jackson County reached 300,000 inhabitants, these words became inapplicable. However, we do not feel that this clerical error of omission should prevent the operation of the statute in Jackson County. As Judge Lamm said in the case of *Rutter v. Carothers*, 223 Mo. 631, the recognized canons of construction "ordain that the naked letter of the law must gently and a little give way to its obvious intentment."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the provisions of Section 9951, Laws of Missouri 1933, page 428, are applicable to Jackson County, Missouri.

Respectfully submitted,

JWH:EG

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Assistant Attorney General

APPROVED:

(Acting) Attorney General