

TAXATION:
COUNTY COURT:
REFUNDING ILLEGAL LEVIES:

Moneys collected from illegal taxes levied may be refunded by the county court only when such tax money is either in the county treasury or under the control of the county court.

March 14, 1938

Mr. N. Elmer Butler,
Attorney at Law,
Galena, Missouri.



Dear Sir:

This is to acknowledge receipt of yours of March 10, 1938 requesting an official opinion from this office which is as follows:

"Will you please give me an opinion on the following: Several years ago some county school land got on the tax books erroneously and was sold for taxes. At that time it was bid in by a Mr. Craig. He paid taxes on it for about fifteen years, but I am informed that someone told him shortly after he bought it that it was school land. Mr. Craig has since died and now his widow finding that she could not give a title to it, asks that the County Court reimburse her for the taxes she has paid. Can the County Court legally do this?"

It appears from your request that the taxes on the land in question have been voluntarily paid for a period of fifteen years and that the owner now wants to know whether or not the county court may reimburse her for such payments. From my research on this point I find that if the county court has authority to reimburse anyone for taxes, it would be on account of an illegal levy of such taxes. Section 9981 R.S. Mo. 1929 provides as follows:

"Wherever, in any county in this state, money has been collected under an illegal levy, the county court of such county or counties is hereby authorized to refund the same by issuing warrants upon the fund to which said money had been credited, in favor of the person

or persons who paid the same as shown by the collector's books: Provided, that should the person in favor of whom any warrant or warrants are issued be dead or unable to appear in person, then the same shall be paid to his heirs or legal representatives: Provided, further, that said county court or courts may, in their discretion, refund, in addition to the money collected, interest which may have accrued upon the same, not to exceed six per cent. Provided further, that before any levy shall be considered illegal, it shall have been so declared by the supreme court of the state of Missouri: Provided further, that the provisions of this section shall only apply to those counties in which the money collected under said illegal levy is either in the county treasury or within the control of the county court: Provided further, that the county court so refunding said money shall specify the time in which said money shall be refunded, and all warrants left on hand after the expiration of such time shall be by said county court canceled, and the money and interest turned into the school fund of the county."

And by Section 1262, page 984 of Volume 61 Corpus Juris, it is provided:

"It is generally held that an action may be maintained against a county, town, or other municipal corporation for the recovery of taxes illegally exacted only while the fund so raised remains in the possession of defendant. Hence, if a county has collected general taxes, part of which are for itself and part for the state or for townships, school or road districts, or the like, no recovery can be had after the funds have been divided up and paid over to the several treasurers or receiving officers, where no claim is filed before distribution." * * * * *

In the case of State ex rel. v. Chicago & Alton Ry. Co., 165 Mo. 597, 611, the Court said:

"But appellant is advised that by the Act of March 27, 1891, now section 1809, Revised Statutes 1899, the county court was given authority to refund money collected under an illegal levy and for that purpose to draw warrants upon the fund into which it had been paid. Just what kind of an illegal tax that statute contemplates, whether the illegality has reference only to the subject of the tax itself, or embraces also taxes otherwise lawful but assessed in a manner not authorized by law, we need not now inquire. The statute itself provides that it shall apply only when the money is in the county treasury or under the control of the county court. If this had been money collected for general county purposes, its place would be in the county treasury, and it would be under the control of the county court, subject of course to the restrictions that the law imposes on that control. But here the money was collected for a particular purpose and the county court had no control of it except to devote it to that purpose. The tax was levied for a lawful purpose, imposed on property liable to the same and was within the limits of the law, but it was an illegal levy because it was not imposed in the manner prescribed by law. Still, when the taxpayer comes voluntarily to the collector and pays the money on that account, and it is by the county court set apart to that purpose, the rights of the creditor, for whose debt the tax was levied, attaches, and the county court no longer has control of the fund." * * * * *

By said Section 9981, supra, the county courts are authorized to refund taxes provided the money for such taxes is in the county treasury or within the control of the county court. As soon as these taxes have been distributed to the state and its subdivisions for which they are collected they pass out of the treasury and from under the control of the county court and the county court after that time has no

March 14, 1938

authority to refund any taxes. Said section also provides that the tax levy shall not be considered illegal so as to authorize a refund until it has been so declared by the supreme court.

From your letter it does not appear that the supreme court has ever passed upon the legality of the levy of the tax in question. That being true, the taxpayer referred to in your letter could not get the relief she seeks under this section until the tax has been declared illegal by said court. The county court merely acts as an agent for the state in administering the laws and its authority is limited by statutes. We fail to find any law except Section 9981, supra, which authorizes the county court to refund any taxes.

CONCLUSION

This office is, therefore, of the opinion that the county court is not authorized to refund any of the taxes paid on the lands mentioned in your request nor is it authorized to reimburse the taxpayer for such taxes.

1. Because the levy for said taxes has not been declared illegal by the supreme court and

2. Because the moneys for such taxes has long since passed out of the county treasury and from under the control of the county court.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:DA