

POLL TAX: What poll tax may be levied and collected in
counties under township organization.

March 25, 1938



Mr. Charles F. Elmore
Salisbury, Missouri

Dear Sir:

Pursuant to your request, I have prepared the following opinion concerning the poll tax law of Missouri in counties under township organization.

At the 1937 session of the legislature, Laws of 1937, page 440, the following bill was passed:

"That Sections 7879, 7880, 7881, 7882, 7883, 7884, 7885, 7886, 7887, and 7888 of Article Three (3), Chapter Forty-two (42) of the Revised Statutes of the State of Missouri for the year 1929 and Sections 8157, 8158, 8159 and 8160 of Article Fifteen (15), Chapter Forty-two (42) of the Revised Statutes of the State of Missouri for the year 1929, be and the same is hereby repealed."

This act repeals all the statutes providing for the levying and collection of poll taxes by counties in this State, with the exception of those poll taxes which cities and villages are authorized to collect. Sections 8157 to 8160, inclusive, R.S. Missouri, 1929, relate to the levying of poll taxes in counties under township organization. Section 8158, R.S. Missouri, 1929, provides that township boards shall, at the regular April meeting, levy a poll tax for road purposes, and that this levy shall be made in the same manner, collected in the same way, and subject to the same restrictions as is provided for in those counties not under township organization.

Section 7880, R.S. Missouri 1929, provides the manner in which poll taxes shall be collected in counties not under township organization. This section provides that the tax levied shall apply to all able bodied males between the ages of twenty-one (21) and sixty (60) on March 1 of the current year for which the tax was levied, except persons residing within incorporated cities. The tax levied shall not exceed \$4.00. Those who desire to work out the tax at the rate provided by statute must be given two days' notice before the work is to be done.

The provisions of Section 7880, R.S. Missouri 1929, apply to the collection of poll taxes in counties under township organization with the additional requirement made in Section 8158 that if the township adopts the contract system of working roads, said taxes shall be paid in money.

Section 7881, R.S. Missouri 1929, provides that the district road overseer shall notify all poll taxpayers by at least four written notices posted in said district on or before June 1st of the amount of poll tax levied. The taxpayer then must pay the tax or make arrangements, by giving fifteen days' notice to the road overseer, to pay his tax in labor. If the tax is not paid by July 1st, then a suit may be instituted in the name of the road district before any Justice of Peace to recover the tax. Section 7886, R.S. Missouri 1929, provides that suit shall be filed not later than September 1st of each year, but the failure to file by this time shall not be a defense to the action.

Section 7887, R.S. Missouri 1929, makes it the duty of the prosecuting attorney to represent the road districts in an action to enforce the tax.

The act repealing the poll tax law became effective on September 6th, 1937, after the poll tax for the year 1937 had accrued and become due and payable on or before July 1st.

Section 660, R.S. Missouri 1929, is as follows:

"The repeal of any statutory provision shall not affect any act done or right accrued or established in any proceedings, suit or prosecution, had or commenced in

any civil case previous to the time when such repeal shall take effect; but every such act, right and proceeding shall remain as valid and effectual as if the provisions so repealed had remained in force."

In *Union Pacific Railroad Company v. Board of Commissioners*, 217 Fed. 540, a case in which many decisions are cited and considered, it is held that: Laws repealing an act providing for the levying and collection of taxes do not act retrospectively; the time the tax accrues fixes the rights and duties of the public and taxpayers; and that the remedies which the law afforded before the repeal follows the tax until collected. To the same effect is 61 C.J. 1012, and *Cooley on Taxation*, Vol. 2, page 1181.

In *State ex rel. v. Hackman*, 270 Mo. 1.c. 609, the court, in construing what is now Section 660, R.S. Missouri 1929, along with other relative sections, said:

"These sections, construed together, so modify a repealing statute, as to not only render valid initiatory or preliminary acts in the exercise of a power conferred by a former statute, but authorize such subsequent acts as may be necessary to effect the purpose originally contemplated. * * * * * The limitation of the operative effect of these sections to judicial transactions as contended for by respondent, is not in accord with their terms, nor with the evident purpose of their enactment. Their general nature authorizes the conclusion that they were intended to continue in force repealed laws until proceedings commenced thereunder, regardless of their nature, might be completed."

Therefore, it is clear that the poll tax levied and assessed for the year 1937, having accrued and become payable before the poll tax act was repealed, is collectible in the same manner as though the repealing act did not exist.

Section 8181 provides for a poll tax in Special Road Districts in counties under township organization. This section provides that the Board of Commissioners of any such Special Road District shall, on or before the 30th day of April of each year, levy a poll tax on all male inhabitants over twenty-one (21) and under fifty (50) years of age. The levy thus made is certified to the County Clerk and the tax is to be collected by the township collector as other personal taxes. This section provides "the Commissioners shall levy such poll tax as may be levied by the township boards". The provision just quoted refers the commissioners of the Special Road Districts for their authority to fix the amount of the tax to the same authority that township boards have. The authority for township boards to assess the poll tax is found in Section 8158, R.S. Missouri 1929, which has been expressly repealed.

In State ex rel. v. Patterson, 207 Mo. 129, 143, it is said:

"Where a repealing statute expressly repeals certain sections of a statute by numbers, or a specified portion of another act, or even repeals one clause of a certain section, it follows that in the judgment of the Legislature no further repeal was necessary or intended."

While the above is correct, there are other rules of construction, as stated by our courts and text writers, which are pertinent to the question of whether or not the poll tax provided in Section 8181, R.S. Missouri 1929, is also repealed by the enactment in Laws of 1937, page 440, in so far as said section relates to the levy and collection of a poll tax in Special Road Districts.

In *State v. Williams*, 237 Mo. l.c. 182, the rule is stated as follows:

"The rule of construction where one statute adopts another, is that, if the adopting statute specifically designates the title or date of the statute adopted, then the repeal or amendment of the statute thus adopted will not affect the adopting statute. (*Culver v. People*, 161 Ill. 89).

"When a statute like the one now under consideration refers to the general provisions of the law on a given subject for its interpretation, then an amendment of the general laws on that subject effects a corresponding amendment of the statute adopting them. (2 Lewis's *Sutherland on Statutory Construction*, (3 Ed.), p. 790, sec. 406.)"

In *Culver v. People*, 161 Ill. 89, 92, it is further held:

"Where, however, the adopting statute makes no reference to any particular act by its title or otherwise, but refers to the general law regulating the subject in hand, the reference will be regarded as including, not only the law in force at the date of the adopting act, but also the law in force when action is taken, or proceedings are resorted to."

The Supreme Court of Missouri in *Gaston v. Lamkin*, 115 Mo. l.c. 33, has said concerning this, that:

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"The general rule governing in such cases seems to be, that where one statute refers to another for rules of procedure prescribed by the former, the former statute if specifically referred to, becomes a part of the referring statute, and the rules of procedure prescribed by the earlier statute so far as they form a part of the second enactment, continue in force, although the earlier statute be afterwards modified or repealed. But when the subsequent statute, being a general one, does not refer specifically to a former statute for the rule of procedure to be followed, but generally to the established law, by some such expression as 'the same as is provided for by law' in given cases, then the act becomes a rule for future conduct to be found when needed by reference to the law governing such cases at the time when the rule is invoked."

To the same effect is the holding in *Newman v. City of North Yakima*, 34 Pac. 921 (Wash.).

Section 8181, R.S. Missouri 1929, refers the Board of Commissioners of the Special Road District, not by specific reference by numbers, to the general law regulating township boards in the levy of poll taxes by saying "the commissioners shall levy such poll tax as may be levied by the township boards". This general reference causes this section to fall within the rules as stated above; the rule for levying poll taxes under Section 8181 is to be taken from the law as it exists at the time the rule is invoked, or that is to say, when the tax is levied.

The poll tax provided for in Section 8181 is collectible for the year 1937 for the same reasons we have heretofore pointed out with reference to the poll tax provided in Sections 8157 to 8160 inclusive, that is, because said tax accrued before the act was repealed.

Sections 8156, pp. (i), R.S. Missouri, 1929, makes it the duty of the road overseer to make a list of all persons residing in his district subject to the payment of poll taxes, and to file the same with the township clerk before March 20 of each year. Subsection (i) of Section 8156, R.S. Missouri, 1929, is repealed by implication because no tax being provided for, after that for the year 1937 is collected, the duty of the road overseer to submit a list of persons subject to the tax becomes unnecessary.

CONCLUSION

Therefore, the repeal of Sections 8157 to 8160, inclusive, in R.S. Missouri, 1929, abolishes poll taxes in counties under township organization, except those taxes levied and accrued for the year 1937 before said sections were repealed. These are to be collected as though the repealing act was never enacted. The poll tax provided for in Section 8181, R.S. Missouri, 1929, the amount being governed by Sections 8157 to 8160, inclusive, of the general law pertaining to poll taxes in counties under township organization, is also abolished except for the tax levied and accrued for the year 1937 for the reasons aforesaid.

Respectfully submitted,

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APPROVED By:

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