

- TAXATION:
SCHOOLS -
- (1) How collector may be relieved of illegal taxes on his books.
 - (2) Money illegally collected for one district can not be credited to district where it rightfully belongs, but must be credited as indicated.
 - (3) Error in extension of school tax may be corrected in supplemental tax book.
 - (4) Taxpayer not entitled to credit for what he paid by reason defective tax book, unless the same was credited to district where it actually belongs.
 - (5) Tax so collected can not be refunded.

December 3, 1938

Honorable Alfred F. Moeller
Prosecuting Attorney
Ste. Genevieve County
Ste. Genevieve, Missouri



Dear Sir:

This will acknowledge receipt of your letter of November 16, 1938 requesting an opinion as follows:

"In 1935 the City of Ste. Genevieve by an election extended its limits to include considerable additional territory. On the 1937 and 1938 County Tax Books the tax payers in this extended area were assessed as being in the School District of the City of Ste. Genevieve and the school taxes were figured on the rate levied by the School District of the City of Ste. Genevieve. Last week the Circuit Court in this County declared the said City Extension election held in 1935 to be invalid. Now these tax payers who were in the extended area are coming to the County Collector and offering to pay their 1937 and 1938 School Taxes provided they are figured at the rate in force in the rural districts to which they formerly belonged. The County Collector is charged up with these taxes according to the higher rate in force in the City School District and what we desire to know is just what procedure should be gone through so that the Collector's Tax Books and Tax Bills can be changed so that they will show the amount due by these tax payers according to the rate in force in the rural district into

which they go by reason of the extension being held invalid.

"Some of these tax payers during the year 1937 paid their taxes including the school tax levied according to the rate in the City School District and the Collector desires to know whether these people who actually paid their taxes have any recourse on him for the difference between what they paid and what they would have paid in the other district."

Your letter, as we see it, presents the following questions:

(1) By what method may the tax records of the Collector be corrected in order that the Collector will not stand charged with the taxes on the property in the extension area, in the City School District?

(2) How may those who were erroneously taxed in the City School District be reached so that they will pay the proper tax in the Rural School District, and may that which was erroneously paid for taxes in the city district be transferred or credited for the taxpayer to the rural district?

(3) May the taxpayers who paid taxes in the City School District, and whose property is situated in the areas affected by the city limits extension invalidation, recover the amount of tax wrongfully collected from them?

You do not inform us whether the territory affected by the extension ordinance, complied with the provisions of Section 9344 R. S. Mo. 1929 and voted to join the city school district as is authorized after the city limits were extended. However, this does not affect this opinion because in either event - the failure to comply with statute, or the invalidity of the extension election - the area annexed to the city was not and is not a part of the city school district.

We assume that the area affected by the extension election did not join the city school district under the provisions of Section 9342 R. S. Mo. 1929 by voting to do so, as authorized,

notwithstanding the extension election. If the area affected joined the city district under this statute it is still a part thereof, because a city limits extension election is not a necessary prerequisite under this law for a rural area to join the city school district.

We shall consider questions one and two first, and, before any attempt at a disposition can be made, it is necessary to determine whether under these circumstances the taxes assessed on the property in the extension area amounts to erroneous assessment or erroneous taxation.

In State ex rel v. Brown 172 Mo. 374 a very similar question was involved. In that case the curator of a minor was assessed for school taxes on his ward's property by the assessor in District No. 2, it being the proper district. The county clerk in making up the "school tax book" extended said assessment in District No. 4 and delivered said tax book to the collector. The curator brought a mandamus suit to compel the collector to accept his tender of the rightful amount of tax due (there was a different rate in District No. 2 than in No. 4, as here) and credit said payment tendered to District No. 2 as if the assessment had been extended by the clerk in the right district. The court held that mandamus would not lie for the reason the collector could only accept such taxes as were extended by the clerk on the tax book and no extension had been made on said assessment in District No. 2.

In the disposition of this case the Supreme Court quoted with approval from the trial court's written opinion, as follows (l.c. 380):

"The assessor is not required or authorized to determine the school district of a taxpayer; the 'assessor's book' which he makes up - legally made up - contains no such information. The assessor has to do with no particular tax, but his duty ended when he has ascertained and listed all the taxable real and personal property in his county, * * *".

The opinion then points out when the wrong first arose, that is, when the county clerk extended the tax, and said:

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"* * * in this case there was no erroneous assessment complained of, it is simply an erroneous taxation alleged. If plaintiff is taxed in the wrong district or wrong county then it is illegal and its collection can not be enforced."

Applying what is said in the Brown case to the instant question it is clear "it is simply erroneous taxation" about which those in the extension area now complain.

Now follows the reason why this distinction is important. In School District No. 46 v. Stewartville School District 110 S. W. (2d) 399 (Mo. App.) it is held that county courts have no jurisdiction to correct matters of erroneous taxation. The court cited sections 9808, 9980 R. S. Mo. 1929 and Section 9946 Laws 1933 p. 424 and held that said sections confer on the county courts authority only to correct erroneous assessments, not erroneous taxation. The court said (l.c. 403):

"There is no constitutional or statutory authority giving jurisdiction to county courts in matters of erroneous taxation."

Thus, there seems to be no way for the collector's tax books to be corrected. However, those who were fortunate not to have paid the erroneous taxes in the city school district, are not liable therefor because in the Brown case it is so held (see quotation supra). And those who have paid said erroneous taxes are not relieved from paying them in the rural district. In the Brown case, it is said (l.c. 380):

"The payment of an illegal tax by him (the curator) would not relieve him from the payment of a tax where it legally belongs; * * *".

Sections 9264, 9265 R. S. Mo. 1929 make it the duty of county collectors to collect all current school taxes, placed on the general tax books by the county clerk, and in returning the delinquent land list to return therewith all land school taxes remaining unpaid. Both current and delinquent

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school taxes are to be collected in the same manner as current and delinquent state and county taxes.

In the Brown case the court in speaking of the duty of the collector to collect these taxes said (l.c. 380):

"* * * under the authority of the 'school tax book' certified to the collector, he is bound, in the discharge of his duties, to proceed and act in accordance with its commands."

The collector being bound to proceed in accordance with the "school tax book", it is his duty to proceed to, at least, attempt to collect all taxes extended thereon, because that is its command, even though it is a foregone conclusion that payment of these taxes in the city school district can not be enforced. When a court of competent jurisdiction declares said tax to be illegal, then of course the collector would no longer be charged therewith.

Another way which the discharge of the collector might be effected, if equity can be invoked to avoid a multiplicity of suits, is for the taxpayers to seek to restrain the collection of the illegal taxes by injunction.

In Michael v. City of St. Louis 112 No. 610 a number of property owners brought an injunction suit to enjoin the collection of certain assessments for benefits to the property of plaintiffs for opening a street. The court held that such action would lie and stated as follows (l.c. 619):

"The only community among them (the plaintiff taxpayers) is in the question at issue to be decided by the court; in the mere external fact that all their remedial rights arose at the same time, from the same wrongful act, are of the same kind, involve similar questions of fact, and depend upon the same questions of law." 1 Pomeroy on Equity Jurisprudence (2Ed.) Sec. 260. Such a community of interest in the questions

to be decided is now generally held to be sufficient to call for the exercise of equitable jurisdiction to prevent a multiplicity of suits in this class of cases, and to this doctrine we now agree."

In the instant case it is clear that a community of interest exists among the taxpayers in the extension area, because their rights arose at the same time from the same wrongful act, are of the same kind involving identical questions of fact and depending on the identical questions of law - these being the extension election and the declaration by the circuit court that the same was invalid.

When a court of competent jurisdiction enjoins the collection of said school taxes then of course the collector could no longer be charged therewith.

These are our suggestions on how the collector may relieve himself of the illegal taxes with which he stands charged.

Continuing the second question: What should be done in order to effectuate the collection and payment of the taxes rightfully due the rural school district from the taxpayers (both those who paid the illegal tax and those who did not) in the extension area?

In the Brown case, it is settled that the collector can do nothing on this point. It is said there (l.c. 381):

"The facts as disclosed in this case show that the county clerk extended the taxes to the respective school districts; whether his action was in pursuance of the provisions of the statute, whether legal or illegal, the collector was not answerable for the acts of the clerk. After the tax books were adjusted and turned over to the collector, he had but one duty to perform; that was to collect the taxes and apply them as indicated by the tax book. The collector

has no power over the tax books, he is not authorized by any statute that has been brought to the attention of this court, to alter or change the tax books at pleasure."

This case answers that part of question two concerning whether the taxes erroneously paid in the city district can be transferred or credited for the taxpayer in the rural district because it is held the collector must collect the taxes "and apply them as indicated by the tax book." Also neither can the collector change said books to show the extension of these taxes in the rural district.

The "illegal action" (though unintentional) of the county clerk resulted in the taxes on the property in the extension area being extended to the wrong school district. We say, advisedly, "illegal action" because the clerk is presumed to know the law and thus know that the extension election was invalid.

In the Brown case it is further said (l.c. 381):

"If the county clerk had no right or authority to assign the * * (taxpayer) to district No. 4 (the wrong district), and assess a tax against him according to the rate fixed by said district, then such taxation is simply illegal and void."

The county clerk in the instant case had no right to assign these taxpayers to the city district and such assignment being absolutely void, legally it stands as if the clerk had taken no action and made no assignment or extension of said taxes.

Section 9878 R. S. Mo. 1929 provides as follows:

"When for any cause there has been a failure to levy the state, county, school or other taxes, or any portion thereof, or to extend and authenticate the same for the use of the collector, or to make

out and deliver to the collector a proper tax book for the collection of the same, as required by law, in any county for any year or years, the clerk of the county court of such county for the time being, when so required for such state taxes by the state auditor, and for such county, school or other taxes by the county court, shall make a supplemental tax book for such year or years. * * *

This section then provides the manner in which this supplemental tax book is to be made and has a proviso attached as follows:

"Provided, that whenever such taxes or any portion of them shall have been paid upon defective or illegal tax books, the amounts so paid shall not be charged in such supplemental tax books, and when any such taxes have been paid in full upon any property, the same, with the description of said property and the name of the owner thereof shall be omitted from such supplemental tax book."

This section furnishes ample authority for the county clerk, in a supplemental book, to extend the taxes on the property in the area affected by the extension ordinance in the rural school district where it rightfully belongs. The proviso furnishes no relief to those who paid the tax in the city school district either in part or in full. We construe it to mean that the exception provided applies when the tax paid on defective tax books was in fact credited to the subdivision actually entitled to the same, because any other construction will result in the rural school district losing a portion of its revenue for the years in question and operate to excuse those who paid the city district tax from paying the tax to whom it really belongs - the rural district. It was these parties own wrong which causes them this loss. They are presumed to know the law and know the extension election was invalid. The payment of an illegal tax does not

relieve one from the payment of a tax where it actually belongs, and the collector must apply the illegal tax collected by him as indicated by the tax book, that is, to the city school district (see quotation Brown case, supra).

The third question is answered by the statutes. Those taxpayers, in the affected area, who paid the illegal tax in the city school district, are not entitled to have said amounts refunded them at this time. The provision of Section 9981 R. S. Mo. 1929 prevents such a refund except under certain circumstances, which do not exist here. These conditions are: That the levy shall have been declared illegal by the Supreme Court of Missouri and that the money illegally collected is still in the county treasury or within the control of the county court.

CONCLUSION

Therefore, it is the opinion of this department that: The collector may only be relieved of the illegal taxes charged to him on his book when a court of competent jurisdiction declares said tax to be illegal either in a direct suit to enforce collection of said taxes or by the taxpayers enjoining the collector from doing so; that the money illegally collected for the city district can not be credited to the rural district, but must be applied to the city school district; that by preparing a supplemental tax book these properties may be extended in the right school district and; that the tax collected for the city school district can not be refunded to those who paid said illegal city school taxes at this time.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General
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