

TAXATION:
RAILROADS, TELEPHONE, ETC,
LIABLE FOR WHAT TAXES:

Railroads and other utilities
similarly taxes owning or holding
property on June 1, including
property acquired on that date are
liable for taxes thereon for the
ensuing year.

February 24, 1938

Mr. Conn Withers,
Prosecuting Attorney,
Clay County,
Liberty, Missouri.

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Dear Sir:

This is to acknowledge your request for an official
opinion dated February 8, 1938, which is as follows:

"At the behest of the County Collector
of this county I respectfully request
the opinion of your Department on the
following matter:

Clifford T. Halferty, County Collector,
has been requested by the Public Water
District #1 of Clay County, Missouri,
organized under the Laws of 1935 to be
sue for taxes against certain utilities
which suit he does not believe could be
successfully maintained in which conclu-
sion I am inclined to agree with him.

The manager of the Water District is very
insistent that he bring these actions and
in order that he may be properly guided he
requests this opinion.

I enclose herewith a copy of a letter set-
ting out the facts which was prepared by
the attorney for the Water District and
which the collector and I have carefully
checked and believe to correctly recite
the facts involved.

Under these facts can a suit to collect
from these utilities a tax based on the
assessment of June 1, 1935, being what we
commonly call the 1936 tax, be success-
fully maintained?"

Included with the request was a statement of facts pertaining to public Water District No. 1, Clay County, Missouri, part of which is as follows:

"Mr. Clifford Halferty
County Collector
Liberty, Missouri.

Dear Mr. Halferty:

Complying with your request for information concerning the steps taken in the matter of the tax levy on the properties of the Southwestern Bell Telephone Company and the Kansas City Power & Light Company, taxes for which levy you have indicated these companies have refused to pay, I submit the following facts:

The completion of the organization of the water district was on the 2nd day of December, 1935. On December 30, 1935, I wrote a letter to the clerk of the county court giving him the information that had been gathered up to that time with relation to the property values in the water district, which included the number of miles of line of the Kansas City Power & Light Company, the Southwestern Bell Telephone Company, American Telephone & Telegraph Company, Great Lakes Pipe Line Company, Q.O. & K.C. Railway Company, K.C.C.C. & St. Joseph Railway Company, and the North Kansas City Bridge & Railway Company. This information had been furnished primarily for the purpose of determining the valuations of property in the district as a basis of the bond issue that was then in contemplation. The information furnished at that time giving the number of miles of wire of the Kansas City Power & Light Company, the Bell Telephone Company, and the American Telephone & Telegraph Company was obtained directly from these companies. I have since checked Mr. Crossett's office and find that this letter was received by him

in due course of mail.

On January 20, 1936 the water district board passed a resolution in which it estimated the amount of money necessary to be raised for the incidental fund for the district provided for in Sections 5 and 12 of the water district law, appearing respectively on pages 331 and 334, Laws of Missouri 1935. On January 21 the clerk of the board of the water district prepared a certificate giving the facts about the passage of this resolution and I forwarded it to the clerk of the county court on that day.

On April 27, 1936 I furnished the county clerk an itemized list of the real property in the water district subject to taxation and wrote him a letter at that time. He had previously indicated in oral conversation that it was not his duty to find out and list the real estate that was in the water district, and this information was given him in order that he might have it as a basis for the extension of the levy on the tax books. On June 13, 1936, the county court made a levy of 15¢ on the \$100.00 valuation pursuant to the estimate made by the board which was certified to as indicated above and as provided for in Section 12 of the water district law referred to above. * * * * *

Public Water District No. 1 of Clay County, Missouri, was formed on December 2, 1935, by virtue of provisions of the Laws of Missouri, 1935, pages 327 to 337.

Your request indicates that the Southwestern Bell Telephone Company and The Kansas City Power and Light Company which are holders of property in the district, are claiming that the district is not authorized to collect the taxes for 1936 on their properties in the district which are based on the assessment of June, 1935. We assume this position is taken by these companies because of the fact that the water district was not a legal entity at the date of the assessment.

Section 10066, page 422, Laws of Missouri, 1933, provides

that the taxes on such utilities shall be levied and collected in the same manner as railroad taxes, part of which section is as follows:

"* * * and all property, real and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county courts, and the county and state boards of equalization are hereby required to perform the same duties and are given the same powers in assessing, equalizing and adjusting the taxes on the property set forth in this section as the said courts and boards of equalization have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes on railroad property; and the president or other chief officer of any such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, or express company, or the owner of any such toll bridge, is hereby required to render statements of the property of such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, or express companies in like manner as the president, or other chief officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property."

For the purpose of assessing taxes on property owned by railroad corporations in this state, the legislature has provided in article 13 of chapter 50 R.S. Mo. 1929, the course to be followed. Broadly speaking, there are two classes of rail-

road property for the purpose of assessment and taxes; the one is what is termed distributable property; the other is all property that is not distributable, it being designated as local property. The distributable property is assessed by the state board of equalization. The local property is assessed by the county assessor as other local property is assessed in the county.

It appears from your request and the facts concerning the formation of the district accompanying your request, that the taxes are sought to be collected for the district by virtue of the provisions of Section 5, page 331 and Section 12, page 334, both of the Laws of Missouri, 1935, which provides as follows:

"The following powers are hereby conferred upon public water supply districts organized under the provisions of this act: * * * * * to certify to the County Court or county courts of the county or counties within which such district is situate, the amount or amounts to be provided by the levy of a tax upon all taxable property within the district to create an interest and sinking fund for the payment of general obligation bonds of the district and the interest thereon, and also to create an incidental fund to take care of all costs and expenses incurred in incorporating the district, and all obligations contracted prior thereto and connected therewith and to purchase equipment and supplies needed in the operation of the water system of the district, provided, however, that the power to create an incidental fund by the levy of a general property tax shall cease after two annual levies therefor shall have been made, and such levy shall not exceed fifteen cents (15¢) per annum on each One Hundred Dollars (\$100.00) assessed valuation of taxable property within the district; to provide for the collection of taxes and rates or charges for water and water service; * * * * *"

Section 12, page 334, Laws of Missouri, 1935, is as

follows:

"For the period and subject to the limitations contained in this act, the board of directors of any district organized hereunder shall, on or before the tenth day of May of each year, make estimates of the amount of taxes required to be levied to provide for the purposes of the district as specified in Section 5 hereof. Such estimates shall thereupon be certified by the clerk of the board and filed with the clerk of the county court or the respective clerks of the county courts of the counties in which the district is situate. Upon the basis of such estimates the county court or respective county courts shall proceed to levy a tax upon all taxable property within the district, sufficient to provide the funds required by such estimates. The clerk of the county court or respective clerks of the county courts shall enter such levies on the tax books of the county in the same manner as school district taxes are entered, for the use of the county collector. The taxes thus levied and extended upon the tax books shall be collected and the payment thereof enforced at the same time and in the same manner as is provided for the collection and payment of taxes levied for state and county purposes and such taxes, when collected, shall be remitted by the collector or collectors of the revenue, to the treasurer of the district."

It also appears from your correspondence that on January 20, 1936, the officers of the water district passed a resolution estimating the amount of money necessary to be levied for the incidental fund and a copy of this resolution was delivered to the County Court of Clay County on January 21, 1936.

And it appears that on April 27, 1936, the district furnished to the county court an itemized list of the property subject to taxation in the district.

By virtue of the provisions of Section 10012 R.S. Mo.

1929 and Section 10066, page 422, Laws of Missouri, 1933, it was the duty of the said utilities through their proper officers to:

" * * * * * furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the total length of their road so far as completed, including branch or leased roads, the entire length in this state, and the length of double or sidetracks, with depots, water tanks and turntables, the length of such road, double or sidetracks, in each county, municipal township, incorporated city, town or village through or in which it is located in this state; the total number of engines and cars of every kind and description, including all palace or sleeping cars, passenger and freight cars, and all other movable property owned, used or leased by them on the first day of June in each year, and the actual cash value thereof."

A duplicate of the statement required by said Section 10012 shall be filed by the utility with the clerk of the county court of each county through which such utility extends.

By virtue of the provisions of Section 10014 R.S. Mo. 1929, the county court at the next term after the January term shall examine such statement and determine the correctness thereof as to the description of the property and the valuation thereof. And if found correct, the court shall cause the clerk thereof to certify to the correctness of the statement under the seal of the court and forward the certificate to the state auditor on or before the first of April thereafter.

From the statement of facts with your letter, it appears that the water district did not furnish to the county court the itemized list of property subject to taxation in the district until April 27, 1936.

We are assuming that the county court performed the duties

required of it by said Section 10014 and within the time provided by law. That being the case, the returns made by the district on April 27, 1936, were too late to be included with the report which the county court was to make to the state auditor on or before April 1, 1936. The information which you furnished does not reveal whether or not there were any exceptions to the act of the county court in performing its duties required by said Section 10014 pertaining to the distributable properties of the utilities in the county, cities and subdivisions of the state.

The returns provided for by Sections 10012 and 10014, supra, are to be read before the state board of assessment on the third Monday in April of each year and that board then assesses, adjudges and equalizes the valuation of the distributable properties of the utilities in the state according to the provisions of Section 10017 R.S. Mo. 1929, which provides as follows:

"The state board for the assessment and equalization of railroad property shall be composed of the governor, secretary of state, state auditor, state treasurer and attorney-general, and shall meet annually at the capitol in the City of Jefferson, on the third Monday of April of each year, for the purpose of assessing, adjusting and equalizing the valuation of such railroad property. The said board shall proceed to assess, adjust and equalize the aggregate valuation of the property of each one of the railroad companies in this state specified in section 10012. * * * * *

Then by authority of Section 10022 R.S. Mo. 1929, the said board acting upon the information it has obtained from the utilities, apportions the property of the utilities, so assessed, to the county, municipal township, city or incorporated town in which such utility is located according to the ratio which the number of miles of such utility in such county, municipal township, city or incorporated town shall bear to the whole length to such utility in the state.

It appears from the record of the State Tax Commission that no mileage of these utilities was apportioned to the water district for the assessment of June 1, 1935. Sections 10025,

10026 and 10027 R.S. Mo. 1929, provides the manner in which the local properties of the utilities are to be assessed and taxed.

Section 10028 R.S. Mo. 1929 provides as follows:

"The county court, upon the receipt from the auditor of the certificate of the action of said board of assessment and equalization, the returns of the county assessor and the certificate of cities, towns and villages made under the preceding section, shall, at the regular term of court, if in session at the time, if not, at an adjourned term or at a special term of said court called for that purpose, ascertain and levy the taxes for state, county, municipal township, city incorporated town and village and school purposes, and for the erection of public buildings, and for other purposes on the railroad and the property thereof, in such county, municipal township, city and incorporated town or village, at the same rate as may be levied on other property, except that the rate for school purposes and for the erection of public buildings, and for other purposes, shall be ascertained as prescribed in the next succeeding section, and shall make an entry thereof on the records of said court; and in case the county court has failed or omitted, or may hereafter fail or omit, from any cause whatever, to levy the taxes or any portion of the taxes for any year or years, or in case the taxes or any portion of the taxes for any year or years shall have been illegally or erroneously levied, then said court, at the time of making the regular levy upon railroad property as herein provided, shall, in addition thereto, ascertain and levy the taxes for state, county, municipal township, city, incorporated town or village and school purposes, and for the erection of public buildings and for other purposes, on the railroad and the property thereof,

in such county, municipal township, city and incorporated town and village, which may have been or may hereafter be omitted or illegally or erroneously levied upon the valuation of the railroad and the property thereof, as returned by the state board of equalization for such year or years, at the same rates that were levied upon other property for the year or years for which said taxes were omitted or illegally or erroneously levied: Provided, that in no case shall the levy exceed the constitutional limit; and which taxes, when so levied, shall become due and payable, delinquent and subject to penalty as other railroad taxes now are, and shall be recoverable as hereinafter provided."

It was by virtue of the provisions of the foregoing acts that the county clerk of Clay County made the levies for the 1936 taxes which included the levy for the Water District No. 1 of Clay County, Missouri. At the time the county court made this levy for the water district taxes, it does not appear that the mileage of these utilities had been apportioned by the state taxing board as provided by Section 10022 R.S. Mo. 1929, supra, but the county clerk had attempted to perform this act. In the case of State ex rel. Union Electric Light & Power Co. v. Baker et al, 293 S.W. 399, l.c. 404, the court said:

"* * * * The apportionment here contemplated was not in the nature of a power conferred upon the board of equalization, but rather a ministerial clerical duty required of that body before the record of its proceedings should be filed with the state auditor. It seemingly marked the completion of the assessment. 3 Cooley on Taxation (4th Ed.) 1171. It is still incumbent upon that body to perform this duty, notwithstanding the power of original assessment has been transferred to the tax commission, * * * * *"

In the case of State ex rel. v. Lesser, 237 Mo., 1.c. 318, the court said:

"* * * * * The sovereign power of the State to require its citizens to pay taxes on all their personal property, or on what they own representing their interests in personal property, within or without the State, may, for the purposes of this case, be conceded. But conceding that the State has the power to tax such interests, it does not follow that such interests are taxed unless the law so declares. It is not left to the tax assessor or tax collector to say what property or what interests in property are to be taxed. Under our system of taxation there can be no lawful collection of a tax until there is a lawful assessment and there can be no lawful assessment except in the manner prescribed by law and of property designated by law for that purpose. * * * * *"

Even though the water district is entitled to the tax on the assessment of June 1, 1935, yet we do not think the tax in question is legal for the reason that it was not apportioned by the proper officials and as provided by the statute.

On the question of the district collecting taxes levied on an assessment which was made prior to the date of the formation of the district, we find that Section 9746 R.S. Mo. 1929 provides as follows:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

This section includes all taxes that may be levied on the property during the year following the assessing date. No exception is made as to whether or not such levy is one authorized after the date of the assessment nor is any exception made to a tax levied for a sub-division of the state such as the water district in this case which is created after the date of the assessment.

The organization of the Water District No. 1 of Clay

County, Missouri, appears to have been completed on December 2, 1935. Section 3 of Article X of the Constitution provides that taxes shall be uniform upon the same class of subjects within their territorial limits of the authority levying the tax.

Section 4 of Article X of the Constitution provides that:

"All property subject to taxation shall be taxed in proportion to its value:
* * * * *

Section 5 of Article X of the Constitution provides as follows:

"All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, County, school, municipal and other purposes, on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock."

It also appears from the facts you submitted, that these utilities claim that this tax could not be based upon an assessment made prior to the organization of the district and if it does, it would be in violation of the provisions of Section 15 of Article II of the Constitution which provides as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly."

The act authorizing the levy and collecting of such a tax would not be retrospective and in violation of the provisions of said Section 15, supra, for in the case of Clark v. Railroad, 219 Mo. 524, the court in construing the same provisions of the Constitution, said:

"* * * the retrospective laws forbidden by that instrument are laws impairing

existing vested civil rights. The laws must take away such vested right, or it must create a new obligation, impose a new duty, or attach a new disability in respect to gone by transactions, in order to be retrospective and under the constitutional ban."* * *

* * * * *

The owners of property on June 1, 1935, were required to pay the tax for 1936 based on the assessment of June 1, 1935, and they are not deprived of any vested right nor is any new obligation imposed on them for by said Section 9746, they are required to pay all taxes on their property which may be assessed for the ensuing year.

In the case of Cadena v. State ex rel. et al, 185 S.W. 367, we find that the court of civil appeals of the State of Texas in the case similar to the one in question except that the tax payer in that case was not a railroad corporation or other utility in which such returns are required as in Missouri, the Court said:

"The act creating the school district was approved by the governor on March 22, 1915, and went into effect June 19, 1915. The act authorized the levy of taxes by the board of trustees for the issuance of bonds and a maintenance tax. The board of trustees of the district levied a tax of twenty five cents on the one hundred dollar valuation to supply a maintenance fund. The contention is that the district was not in existence on January 1, 1915 (the date of the assessment) and no tax could be levied for that year.

It was evidently contemplated by the legislature that the people of the district should obtain the benefits of its creation immediately.

It could not have been contemplated that instead of the law becoming effective immediately or in ninety days after the adjournment at the farthest, it should

"* * * * The decision in the case of Cadena v. State (Tex. Civ. App.) 185 S.W. 367, is authority for the proposition that, when an independent school district is created after the 1st of January of a given year, all property within such newly created district, which was owned by the taxpayer on January 1st of that year, 'is subject to any tax authorized by law, whether such taxes have been authorized theretofore or may be authorized during the year, and can be levied by the body given the power to levy at any time during the year.'" * * * * *

In Volume 44 Corpus Juris, page 1292, section 4323 the rule as it applies to the question here involved is stated as follows:

"* * * There is a conflict of authority as to whether the owner of annexed property can be charged with the current year's taxes, the rule in some jurisdictions being that he cannot and in others that he can be held liable." * * * * * (citing cases)

We find only one Missouri case in point holding that such property is taxable for the current year providing it is brought into the district prior to the date of the levy, which case is City of Westport ex rel. v. McGee, 128 Mo. 152.

In this case the taxpayer contended that the date of the assessment fixes the date of the liability for the taxes, and since the property was not within the corporate limits on the date of the assessment, he was not liable for the city taxes for that year and the Court in this case said:

"* * * * A lien is given for municipal taxes, but there is nothing in the statute that justifies the claim that the lien for the city taxes relates to the date of the county assessment. On the contrary the city council must by

ordinance establish the rate of taxes upon the county assessment, and there is no lien until the tax is levied and extended by the city council on its tax books. The question here is, were these lands within the corporate limits when the tax was levied. If they were, they are subject to city taxation. If the lands are brought into the city after taxes have been levied upon the property of the city, the lands subsequently brought in are not subject to that levy. There is nothing in the law requiring the city to levy taxes on a certain day, nor will the fact that the mayor did not obtain the abstract until the twentieth day of May affect the validity of the tax. The time within which he should obtain the abstract was directory, not jurisdictional."*****

Section 12, page 334, Laws of Missouri, 1935, fixes May 10th of each year as the time which the district may have to make its levy for the water taxes and from the information furnished with your request, it appears that the water district had made its levy prior to the 10th of May of 1936.

From the rule in the case of City of Westport, supra, if the telephone company and electric light companies owned property located in the district on or before May 10th, 1936, and after the district was organized, they are liable for the taxes levied for the district for that year even though they were not in the district on the date of the assessment.

If the contention of the utilities in this matter is correct, then the water district would not be able to obtain any taxes for its incidental expenses until October 1, 1937, and that would be twenty one months after the organization of the water district. The water district act went into effect ninety days after its passage and approval which was March 27, 1935.

We are convinced that the lawmakers did not intend that the water district should wait longer than twelve months

for the revenue it was entitled to from taxes and we are further fortified in this view by Section 18 of the act, page 337, Laws of Missouri, 1935, which is as follows:

"During the period of time given the board to levy a tax on property within the district for incidental expenses as that term is used in this Act, the board may issue and sell current revenue bonds to bear interest at not to exceed six per centum (6%) per annum, to meet the current expenses of the district incurred in advance of the revenue to be derived from such incidental tax levy, and to be paid out of such current revenue when accrued.

Such bonds may be for six (6), nine (9), or twelve (12) months and shall not exceed in the aggregate one-half of the revenue for the fiscal year for which they are issued." * * * * *

From the holding of the courts in the two cases cited above, and in view of said Section 18 of the act, it seems that the levy can be made even though the assessment is dated prior to the date of the law authorizing the levy or prior to the decree incorporating the water district for which the levy is made. There is no doubt of this being the rule which applies to taxes on local property of the utilities which are taxed by virtue of the provisions of said Section 10025, supra.

This leaves one question in the way, and that is that the utilities make their distributable property returns on a mileage basis in the various sub-divisions of the state, and since they have made their returns and in proper time which showed that on June 1, 1935, they had no property in the water district and since their returns were not appealed from or corrected or amended, then is the water district entitled to taxes for the ensuing year.

We do not think there is any doubt of the authority of the water district to collect the taxes on the local properties belonging to the utilities in the district which were assessed as of June 1, 1935, and under the uniformity provision of the

Constitution cited, supra, Section 3 of Article X, the distributable property of the utilities should be included if there is any way provided by statute to make the assessment. Under the rule that all property should bear its portion of the taxes, if the local property of the utilities and other real and personal property in the water district are liable for the taxes of 1936 based on the 1935 assessment, then the tax on the distributable properties of these utilities in the district should be paid for the same year. Section 10021 R.S. Mo. 1929 provides as follows:

"The state board of assessment and equalization shall have the power to assess, adjust and equalize the property hereinbefore specified of any railroad company, in whole or in part, for any year or years since March 10, 1871, for which it has been or for which it may hereafter be omitted from assessment, adjustment and equalization, and to reassess, adjust and equalize any such railroad property, in whole or part, as the case may be, for any year or years for which it may have been heretofore or in which it may hereafter be assessed, adjusted and equalized, but which assessment, adjustment and equalization, for any cause has been or which may hereafter be held by the courts to be irregular or void."

By the provisions of the foregoing section, the board of assessment and equalization has authority to place on the tax books the property of the railroad or the utilities which may have been omitted from assessment and it is by the provisions of this section that we think the legislature intended to correct an omission such as has happened in the case of water district taxes. The assessing and equalization board of the state now has authority to apportion the mileage of these utilities in said water district for the 1936 taxes based on the valuation and returns of such utilities for June 1, 1935.

CONCLUSION

This office is, therefore, of the opinion that the dis-

tributable property taxes for 1936 based on the assessment of June 1, 1935, of the said utilities in Water District No. 1, Clay County, Missouri, are void for the reason that the clerk of the county court had no authority to apportion the mileage of the utilities in the district.

This office is further of the opinion that these utilities are liable for the 1936 taxes levied on their properties in said water district which were based on the assessment of June 1, 1935, and if they have not been properly assessed and apportioned, this may yet be corrected by the board of assessment and equalization under the provisions of said Section 10021 hereinbefore cited.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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