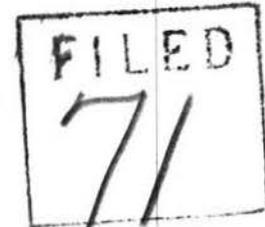


- TAXATION: 1. Drainage Districts by Circuit Court. Refunding under Sec. 11022 R. S. Mo. 1929. Powers of Board of supervisors.
2. Collector must collect and pay over tax included in "drainage tax book" and in so doing is not liable on his bond.
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April 17, 1939.

Mr. Robert T. Pogue
Treasurer and Ex-Officio Collector
Daviness County
Gallatin, Missouri



Dear Mr. Pogue:

We desire to acknowledge receipt of your request for an opinion on March 21, which reads as follows:

"The Secretary of the Hope Drainage District, of Daviness County, Missouri (organized under Ch. 64, Art. 1, R. S. Mo. 1929) has annually certified to this office delinquent drainage taxes levied under Sec. 10760. A considerable part of these taxes have been collected, but a large amount remains unpaid. These taxes were levied to pay bonds issued in 1923.

"In 1934, the Reconstruction Finance Corporation made a loan to this district, with the proceeds of which it purchased the outstanding bonds of 1923 (except one), under an agreement with the district to exchange these bonds for a much smaller amount of new bonds, pursuant to Sec. 11022, R. S. Mo. 1929. This exchange was effected in February, 1939, the new bonds being then delivered to R. F. C. and the old bonds surrendered by it and cancelled. The resolution of the Board of Supervisors of the district

authorizing the issuance of the new bonds provided that the collection of taxes heretofore levied for the payment of the original bonds, to and including the year 1938, should proceed as originally set out and should be held for the payment of the bonded indebtedness of the district, including the refunding bonds thereby authorized and the one outstanding bond of the original issue.

"One of the conditions under which the R. F. C. loan was made was that the District would submit an equitable plan for the collection of back taxes, same to be approved by the R. F. C. The District submitted a plan calling for collection on a 40% basis and this was approved by the R. F. C., and has been followed in collecting taxes for the last four years. It is probable the R. F. C. will oppose any further reduction.

"I am now advised by the Secretary of this District that on March 15, 1939, the Board of Supervisors, by resolution, provided that the delinquent taxes for 1935 and prior years should be collected on the basis of 10% of the original amount, free from any penalty or costs, and the taxpayer receipted in full upon payment on that basis. This action was taken without the knowledge or consent of the R. F. C. and the indications are that the R. F. C. will oppose it.

"Does the Board of Supervisors have the right to make this reduction, and if I collect taxes and give receipts on that basis, will I be protected as against any action or objection which the R. F. C., or other bondholders, or a future Board of Supervisors of the district, might take?

"I am asking for your opinion and advice in this matter for my protection, as collector of delinquent drainage tax in this district.

"An early reply will be appreciated as some of the land owners in the district intend to pay their drainage tax within the next few days."

I.

Section 11022 R. S. Mo. 1929 is, in part, as follows:

"The board of supervisors of any drainage or levee district heretofore organized or that may be hereafter organized in any circuit court or the county court of any drainage or levee district heretofore organized or that may be hereafter organized in any county court of this state, whether said original district has been reorganized in whole or in part, or whether said district in whole or in part has elected to be reorganized under article 1, chapter 64, R. S. 1929, or the board of directors of any district organized or reorganized under article 7, chapter 64, R. S. 1929, whenever in the judgment of such board or court, as the case may be, it is advisable and for the best interest of the landowners of any such district, may, unless a majority of the owners owning a majority of the acres of land within said district shall, at the hearing hereinafter provided for, object to said proceedings, from time to time as may be necessary, to refund all or any part of its bond indebtedness by taking up and exchanging such of its outstanding bonds as the holders thereof may be willing to surrender, and issue in lieu thereof new bonds of such district payable at such longer time, not exceeding forty years from their date, as such district may determine and the holders of the outstanding bonds are willing to accept. * * * *

"Unless and until refunding bonds shall have been authorized and issued, the rate of tax or assessment or amount of assessment applicable to the bonds to be refunded shall not be reduced. * * * It shall be the duty of the district issuing such refunding bonds to make proper provisions for their payment in like manner as is required in the case of the issuance of original bonds by the act under which such district is or shall be incorporated, and the holder of such refunding bonds shall have the same rights as are given the holders of bonds under the act or acts under which such districts are respectively incorporated. * * *" (Underscoring ours)

Section 11023 R. S. Mo. 1929, is as follows:

"All drainage and levee districts heretofore or that may be hereafter organized under any law of this state are hereby authorized and empowered to do each and every act necessary to be by them performed in order to comply with or avail themselves of the provisions of any legislation now enacted or that may be hereafter enacted by the Congress of the United States of America, having for its purpose the refunding or extending the time of payment of the bonded indebtedness of any drainage or levee district or otherwise lightening the present burdens of taxation resting on the lands and property in such districts."

Section 10760 Article 1, Chapter 64 R. S. Mo. 1929, is as follows:

"The said board of supervisors shall each year thereafter determine, order and levy the amount of the annual installment of the total taxes levied

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under the preceding section, which shall become due and be collected during said year at the same time that state and county taxes are due and collected, which said annual installment and levy shall be evidenced and certified by the said board not later than September 1st of each year to the collector of revenue of each county in which lands and other property of said district are situate. The certificate of said installment tax shall be in substantially the following form:"

In construing the Refunding Act of 1929, as to the manner of payment of bonded indebtedness, under the County Court Drainage Act, the Supreme Court, in State ex rel. Drainage District v. Thompson, 328 Mo. 728, 737, says:

"We have what may be called the County Court Act under which a county court may incorporate drainage districts. We also have what may be called the Circuit Court Act by which a circuit court is authorized to incorporate drainage districts. The Refunding Act does not say that provision for the payment of refunding bonds shall be made in the manner as was provided by the act under which such district was organized. If that had been the intention of the Legislature it would not have used the language it did use. The statute uses the word 'is' the present tense of the verb, which means 'now'. The statute says that the district shall make proper provision for the payment of the bonds in like manner as is required by the act under which such district is incorporated. The district in question is incorporated under the County Court Act. The Refunding Act when properly construed and applied to the facts in this case made it the duty of the county court, at the time it issued the refunding bonds, to make proper provision for their payment in like manner as is now provided by the County Court Act under which the district is incorporated. The county court did that and we approve its action in so doing."

The court further held that the Act did not violate the equal protection clause of the Federal Constitution nor the uniformity clause of the State Constitution.

This Refunding Act, delegating authority to statutory officers, applies to drainage districts organized under the county court and those organized under the Circuit Court.

As to the payment of benefit assessments, the parties responsible therefor and the manner of payment thereof, the same rule applies with reference to County Court proceedings and those had in Circuit Court. Such was the holding of the court in Drainage District vs. Trail Creek Township, 317 Mo. 933, 948, which is as follows:

"In Platte River Drainage District v. Andrew County, 278 S. W. 387, 388, the plaintiff drainage district (as in the instant case) was organized, and the benefit assessments were levied, under the Circuit Court Drainage Law (Secs. 4378 et seq., R. S. 1919). In that case, we expressed our satisfaction with the conclusions and principles of law announced in the Bates County case, supra, and ruled that Andrew County was liable for the payment, out of its general treasury, of the benefit assessments levied against the public roads and highways situate within that county. We therein said, again speaking through Graves, J., who was the author of the opinion in the Bates County case: 'The Bates County case had reference to a county court proceeding, but we are impressed with the view that, owing to the amendments, and the language used in the Circuit Court law, the same rule should prevail. The property of a county is benefited in each instance. Benefits should be paid for by the party whose duty it is to keep up the public improvement. Drainage districts help all roads within their territory, as a rule. Such benefits are public, and not private. Under the Circuit Court Act, railroad property,

which is a public highway, is obligated to pay its part of a public improvement. We can see no difference between it and a public highway which is under the control of the county."

Section 11023, supra, gave to the proper authorities, of the drainage district, the right to contract with the R. F. C. to avail itself

" * * * of the provisions of any legislation now enacted or that may be hereafter enacted by the Congress of the United States of America having for its purpose the refunding or extending the time of payment of the bonded indebtedness of any drainage or levee district * * * ".

which grant of authority created the duty to carry out the terms of such contract in meeting such obligations.

The law providing that the board of Supervisors should levy an annual installment tax to pay the bonded indebtedness and the refunding act in Section 11022, supra, providing that

" * * * It shall be the duty of the drainage district issuing such refunding bonds to make proper provisions for their payment in like manner as is required in the case of the issuance of original bonds by the Act under which such District is or shall be incorporated, and the holder of such refunding bonds shall have the same rights, etc."

should be followed by the board. But Section 11023 providing that such boards may act in accord with action of Congress and therefore contract with governmental agencies in refunding bonded indebtedness did not provide for a method of payment or collection of such indebtedness.

CONCLUSION

Therefore, it is the conclusion of this department that if, under the terms of the contract, the proper officials of the drainage district agreed to levy and collect 40% of the annual installment tax theretofore levied and collected to pay the refunded indebtedness, such drainage district has no legal right, without the consent of the R. F. C., to reduce such levy and collection.

II.

Section 10760 Article 1, Chapter 64, supra, in providing that the Board of Supervisors of a Drainage District organized by the Circuit Court shall levy an annual installment of tax and make a certificate thereof, further provides that the same "shall be prepared in the form of a well bound book, which shall be endorsed and named Drainage tax book" of the proper drainage district.

Section 10761 R. S. Mo. 1929, providing that the collector shall collect the drainage taxes and delinquent drainage taxes, also provides for the bond of the collector, as follows:

"It shall be the duty of the collector of revenue of each county in which lands or other property of any drainage district organized under this article are situate to receive the 'drainage tax book' each year, and he is hereby empowered and it shall be his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing. He is further directed and ordered to demand and collect such taxes at the same time that he demands and collects state and county taxes due on the same lands and other properties. * * * Before receiving the aforesaid 'drainage tax book' the collector of each county in which lands or other property of the drainage district are located shall execute to the board of supervisors of the district a bond with at least two good and sufficient sureties in a sum that is equal to the probable amount of any annual installment of said tax to be

collected by him during any one year, conditioned that said collector shall pay over and account for all taxes so collected by him according to law. Said bond after approval by said board of supervisors shall be deposited with the secretary of the board of supervisors, who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested to do." (Underscoring ours)

Section 10763 is, in part, as follows:

"If any county collector of the revenues refuses, fails or neglects to make prompt payment of the tax or any part thereof collected under this article to the aforesaid secretary, then he shall pay a penalty of ten per cent on the amount of his delinquency; * * * "

Under said Section 10761, supra, the collector is to "promptly and faithfully collect the tax therein set out" in the "drainage tax book" and before receiving such book he shall make bond that he "shall pay over and account for all taxes so collected by him according to law". Under Section 10763, supra, failure of the collector to pay over the tax "collected under this article" make him liable for a penalty.

The above sections provide the only authority of a collector to collect annual installment of tax levied and certified by a Board of Supervisors of a drainage district organized by the Circuit Court. Therefore, it is the duty of the collector to collect the tax as appearing in the "drainage tax book" "promptly and faithfully" and in so doing, and subsequently paying over the tax so collected, he can not be held liable.

CONCLUSION

Therefore, it is the opinion of this department that a county

Mr. Robert T. Pogue

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April 17, 1939.

collector should promptly and faithfully collect and pay over the tax shown to be due by the "drainage tax book" of a drainage district under Circuit Court organization and, in so doing, is not liable on his bond.

Respectfully submitted,

S. V. MEDLING
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APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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