

STATE TAX COMMISSION:

POWERS and duties of the State
Tax Commission in regard to the
enforcement of the revenue laws.

January 15, 1940



State Tax Commission of Missouri
Jefferson City, Missouri

Attention: Mr. Clarence Evans,
Chairman

Gentlemen:

This is in reply to yours wherein you submit the following questions:

"1. Can the State Tax Commission, or its chairman, or its members, institute in the name of and on behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the State in matters of taxation and revenue, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary, and also, can the Commission, or its chairman, or its members appear and interplead, answer or defend, in any proceeding or tribunal in which the State's interests are involved in matters of taxation and revenue, and, in execution of said powers, call upon the Attorney General, Prosecuting Attorneys and Circuit Attorneys of the State?

"2. What actions can the State

Tax Commission, or its chairman, or its members, institute for the removal of officers, under the revenue or taxation laws, who may be guilty of misfeasance or malfeasance in office?

"3. Can the State Tax Commission or its chairman, or its members, file writs of certiorari in causes to which it is not a party, or in ex parte proceedings, where the interests of the State are involved in matters of taxation and revenue, according to the theory as expressed in 4 Corpus Juris Secundum, 197, and State ex rel. Shartel v. Westhues, 9 S. W. (2d) 1. c. 617?

"4. Can the State Tax Commission, or its chairman, or its members, appear in tax litigation to which it is not a party, and be heard or file briefs as amicus curiae on taxation matters public in their character?

"5. With respect to the power of the Attorney General, in the enforcement of the taxation and revenue laws, are the powers of the State Tax Commission concurrent and co-extensive?"

The sections of the statute which relate to the foregoing questions on taxation are as follows:

Section 9820, R. S. Missouri 1929, provides as follows:

"The commission shall familiarize itself with all the sources of income provided by law for the state and its political subdivisions, and shall have power to investigate and supervise the

work of administrative officers affecting finances, to the end that the law affecting sources of public revenue shall not be laxly enforced nor their use impaired."

Section 9854, R. S. Missouri 1929, provides in part as follows:

"It shall be the duty of the commission, and the commissioners shall have power and authority, subject to the right of the state board of equalization, finally to adjust and equalize the values of real and personal property among the several counties of the state, as follows:

"(1) To have and exercise general supervision over all the assessing officers of this state, over county boards of equalization and appeal in the performance of their duties, and to take such measures as will secure the enforcement of the provisions of this article, and all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed in accordance with the letter and plain provisions of the law.

"(2) To confer with and advise assessing officers as to their duties under this article and all other laws concerning revenue and taxation, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals

failing to comply with the provisions of this article, or of the revenue and taxation laws. In the execution of these powers the said commission shall call upon the attorney-general, or any prosecuting or circuit attorney in the state, to assist this commission in the enforcement of laws with the supervision of which this commission is charged, and when so called upon it shall be the duty of the attorney-general, and the prosecuting (or circuit attorneys in their respective counties), to assist in the commencement and prosecutions of actions and proceedings for penalties, forfeitures, removals and punishments for violation of the laws in respect to the assessment and taxation of property, and to represent the commission in any litigation which it may wish to institute or in which it may become involved in the discharge of its duties.

"* * * * *

Section 11276, R. S. Missouri 1929, is pertinent to the questions here and it provides as follows:

"The attorney-general shall institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear

and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved."

On the question of the powers and duties of the attorney general and prosecuting attorneys to institute and defend actions in which the public interests are involved, the St. Louis Court of Appeals in the case of State v. Pioneer Creamery Co., 245 S. W. 361, 362, said:

"Section 9793, (1919) which has been upon the statute books of this state since 1891, prescribes the penalty for the failure of corporations doing business in this state to comply with certain requirements imposed upon them by law, and makes it the duty of the Secretary of State to report to the prosecuting attorney of the county in which the business of such corporation is located, and requires the prosecuting attorneys to institute proceedings to recover the fine therein provided for.

"Section 9793, supra, has not been specifically repealed by any act of our Legislature, nor do we think it can be said that it has been repealed by implication.

"Section 736, R. S. 1919, which was section 1007, R. S. 1909, provides that the prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the

state or county. This has, in substance, been the policy of this state since 1825. In 1872, the Legislature abolished the office of circuit attorney, and provided for the election in each county of a prosecuting attorney.

"Section 696, R. S. 1919, makes it the duty of the Attorney General to institute, in the name and on behalf of the state, all civil suits and other proceedings at law or in equity necessary to protect the rights and interests of the state, and to enforce all claims against any and all persons or corporations in whatever court such action may be necessary. This, in substance, has been the law since 1868. The history of this legislation, as well as a discussion of the powers and duties of the prosecuting attorneys in this state, may be found in *State ex rel. v. Lamb*, 237 Mo. 437, loc. cit. 451, 141 S. W. 665, loc. cit. 669, wherein it is said:

"Whatever may be the proper construction of section 970 as to the duties of the Attorney General, it is clear that during all the time since the early territorial days the local state's attorney has been the proper legal representative of the state to institute proceedings in behalf of the state, and in no respect has that power been curtailed by legislation. In a strict historical sense, the prosecuting attorney represents the state and exercises powers analogous to those exercised by the Attorney General in England."

"In State ex rel. Wear v. Springfield Gas & Electric Co. (Mo. App.) 204 S. W. 942, it was held that a prosecuting attorney had the right to maintain an action in a court of equity on behalf of the state to enjoin a nuisance. But the court also stated (204 S. W. loc. cit. 946):

"We do not wish to be understood as indicating that we think that the authority to institute and prosecute a cause of the character with which we are now dealing is exclusively in the prosecuting attorney. Section 970, R. S. 1909, would, in our judgment, authorize the Attorney General to institute on behalf of the state equitable proceedings to enjoin the destruction of fish in the manner set out in plaintiff's petition,' etc.

"In addition to the specific direction contained in section 9793, supra, it would seem to be the general policy of the state, as evidenced by its legislative enactments, that the prosecuting attorney is the proper officer to institute the proceedings in question, even though the Attorney General may possess similar powers and authority.

* * * * *

From the foregoing ruling it seems that the state's attorney is the proper legal representative to institute and defend actions in which the state and general public are concerned. In State ex rel. Laclede Land & Improvement Co. v. State Tax Commission of Missouri, 243 S. W. 887, the Supreme Court of this state discussed the powers and duties of the tax commission as are prescribed in Section 9854, supra, and at l. c. 888, it is said:

"The state tax commission is a non-descript when it comes to the assessment of property. The power to assess property is fixed in named officers under the law, and, unless the Tax Commission Act repeals that law, such commission cannot assess property. To rule that such Tax Commission Act (article 4 of chapter 119, R. S. 1919) repealed the law as to whom the duties were imposed on as to the assessment of property would be preposterous. No agency of the state has considered that such commission has been given such power. The language of the act itself (save some loosely drawn sections, or parts of sections) indicates no such purpose. After the assessment the law provides that there shall be certain county agencies to fix and determine the wrongs committed by the assessor. To hold that these agencies were disturbed or superseded by the Tax Commission Act would likewise be preposterous.

"The Tax Commission Act contemplates that such commission may, in a proper manner, see that these several agencies empowered to assess property perform their duties, but it does not contemplate that such commission perform their duties for them. True it is that such commission may take evidence as to inequalities of assessments, but this is for the sole purpose of advising the state board of equalization. What information, that the tax commission gathers by authority of law, it can give, and should give, to the state board of equalization. The state board of equalization cannot act upon individual discrepancies in the

official work of its subordinate officers, nor can the tax commission (a mere advisory commission for the state board of equalization) go further. The tax commission may gather facts to assist the state board of equalization in determining whether or not the county property has been assessed properly as in comparison with other counties in the state. The decision of the state board of equalization is the finality of an assessment. This because the Constitution (article 10, section 18) so lodges it. No law can deprive this board of its constitutional right to ultimately determine the equalization of property assessments as between the counties. If, after the state board had acted (as in this case), the tax commission could change the assessments, then the constitutional board must yield to a mere statutory board. This is unthinkable. Be it remembered that in this case the relator is asking the tax commission to act after the state board of equalization has acted, because relator avers the previous action of the state board of equalization.

"The act creating the tax commission will be read in vain, if the view is to be taken that it contemplated an interference with the previous methods of assessing and equalizing the assessments of property. In the act there is no indication that the lawmakers intended that property should be assessed other than by assessors named by previous laws, nor is there in the act intimation that such commission should be the final judica-

tory to pass upon the individual cases of irregular or wrongful assessments. The tax commission was formed for a purpose, as indicated by the law. Its purpose was advisory as to taxation, and as to other things not here necessary to discuss. It was authorized to see that the laws pertaining to revenue were enforced, but it was not authorized to assess, or equalize assessments. These were left (where the Constitution contemplates) with the local agencies, giving to the commission the power to see that the laws were enforced. Giving the commission the power to see that the laws were enforced does not mean that it can usurp any of the functions of the bodies over which it has supervision. The assessment of property has a fixed meaning in our laws. It includes the act of the assessor, and the boards thereafter authorized to review his acts. Ultimately, when these agencies are through with their work, the state board of equalization (constitutional in authority) completes the assessment. We conclude that there is no authority in law for this tax commission to interfere with any of the agencies of assessment, from the assessor to the state board of equalization. They can gather information for the information of the latter board, and see to the enforcement of the laws, but not otherwise. As a personal unit in the assessment of property, such board has no power. We would rather put this case upon the broad ground than upon the more restricted one. The acts of this tax commission in all cases are merely advisory, and not otherwise. It recommends matters to the Legislature, but they are not binding.

We need not discuss these, because legislative power is fixed by the Constitution."

While the opinion of the Tax Commission case, supra, does not deal directly with the questions here submitted, yet the statements of the court in that opinion sheds some light on these questions. At l. c. 888, the court in this opinion states:

"* * * The language of the act itself (save some loosely drawn sections, or parts of sections) indicates no such purpose. * * "

We do not know to what sections the court refers when it speaks of loosely drawn sections, or parts of sections, of this act. Again in the same opinion the court said:

"* * * The tax commission was formed for a purpose, as indicated by the law. Its purpose was advisory as to taxation, and as to other things not here necessary to discuss. * * * "

Again the court, in this opinion, said at l. c. 889:

"* * The acts of this tax commission in all cases are merely advisory, and not otherwise. * * "

Referring back to said Section 9854 quoted above, it seems that the tax commission is given general supervision over assessing officers of this state and other taxing officials and boards and is authorized to take such measures as will secure the proper enforcement of the revenue laws of the state. In subsection 2 of said Section 9854 it seems that the lawmakers intended that the commission, in the performance of these duties, should call upon the attorney general or circuit or prosecuting attorneys to assist in the enforcement of these laws. It also requires those officials, when called upon, to assist the tax commission in its statu-

tory duties. The latter part of said subsection 2 of subdivision 2 of said Section 9854 requires the prosecuting officials to assist the tax commission in any litigation which it may wish to institute or in which it may become involved in the discharge of its duties.

CONCLUSION.

In answer to your first question, will say from the foregoing it is the opinion of this department that the State Tax Commission, or its chairman, or its members, may institute in the name and on behalf of the State, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the State in matters of taxation and revenue, and enforce any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary, and also, may appear and interplead, answer or defend, in any proceeding or tribunal in matters of taxation and revenue, and in the execution of the foregoing powers shall call upon the attorney general, prosecuting attorneys and/or circuit attorneys of the State to assist the commission in the performance of such duties.

II.

In answer to your second question on the question of whether or not the commission may institute proceedings for the removal of officers for failure to perform their duty, Section 11202, R. S. Missouri 1929, provides as follows:

"Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall know-

ingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner hereinafter provided."

Section 11203, R. S. Missouri 1929, provides as follows:

"When any person has knowledge that any official mentioned in section 11202 of this article has failed, personally, to devote his time to the performance of the duties of such office, or has been guilty of any willful, corrupt or fraudulent violations or neglect of any official duty, or has knowingly or willfully failed or refused to perform any official act or duty which by law it was his duty to do or perform with respect to the execution or enforcement of the criminal laws of this state, he may make his affidavit before any person authorized to administer oaths, setting forth the facts constituting such offense and file the same with the clerk of the court having jurisdiction of the offense, for the use of the prosecuting attorney or deposit it with the prosecuting attorney, furnishing also the names of witnesses who have knowledge of the facts constituting such offense; and it shall be the duty of the prosecuting attorney, if, in his opinion, the facts stated in said affidavit justify the prosecution

of the official charged, to file a complaint in the circuit court as soon as practicable upon such affidavit, setting forth in plain and concise language the charge against such official, or the prosecuting attorney may file such complaint against such official upon his official oath and upon his own affidavit."

Section 11205, R. S. Missouri 1929, provides as follows:

"When an affidavit has been filed with the clerk of the circuit court of any county in this state, as provided in the preceding sections of this article, the governor may, in his discretion, direct the attorney-general to assist in the prosecution against said officer; and in case of the refusal of the prosecuting attorney or special prosecutor, after the filing of the affidavit provided for in sections 11203 and 11204 of this article, to file a complaint, the attorney-general shall have authority to file a complaint against the official complained of."

It seems that the foregoing sections set up a plan for the removal of officers for failure to perform their duties. These require the prosecuting attorneys and/or attorney general to prosecute such cases.

By reading these sections with Section 9854, supra, so far as said Section 9854 applies to the duties of the tax commission in the removal of officers for the failure to perform their official duties, we think that the Tax Commission, or any of its members, when they have the knowledge mentioned in said Section 11203, could make an affidavit to that

effect which would institute a removal proceedings. By reading these two section together it would seem that the answer to your second question would be that the tax commission, or its chairman, or its members, could institute the action for removal of an officer for nonperformance of duties by filing the complaint mentioned in said Section 11203.

III.

In answer to your third question, and basing the answer upon the foregoing sections, will say that it is the opinion of this department that the tax commission, or its chairman, or its members, may file writs of certiorari in causes in which it is not a party, or in ex parte proceedings, in order that the interests of the State in which tax matters are involved may be properly represented.

In connection with this, we are further of the opinion that such pleadings and actions should be filed and taken by the attorney general or prosecuting attorney or circuit attorney whose duty it is to assist the tax commission in such matters.

IV.

In answer to your fourth question and following the ruling announced above, will say that this department is not in a position to say just what a trial court would do as to permit the tax commission to be heard or file briefs as amicus curiae on taxation matters public in their character, but it appears from the language of said Section 9854 that it was the intention of the lawmakers that the commission, or its chairman, or any of its members, might be authorized to so act in matters in which the revenue laws of the State were involved.

V.

In answer to your fifth question, will say that it is the opinion of this department that the powers of the attorney general and the other prosecuting officers of the State and the State Tax Commission, in

State Tax Commission

(16)

January 15, 1940

the enforcement of the taxation and revenue laws of
this State, are concurrent and co-extensive.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

TWB:DA