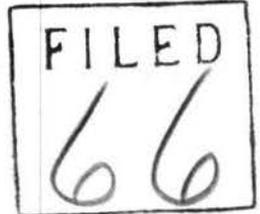


ASSESSOR: County Assessor without authority to make an assessment of property ordinarily exempt from General Taxes which lies within an incorporated sewer district under the provisions of Laws Missouri 1933-34.

September 10, 1940

Mr. M. L. Neaf, Assessor
St. Louis County
Clayton, Missouri



Dear Mr. Neaf:

This is to acknowledge your letter of recent date, requesting an opinion from this department which reads as follows:

"In reply to your letter of the 21st beg to advise it is the contention of the Attorney for Webster Groves Sub-sewer District, the County Assessor must make all assessments under the general law. This attorney agrees there are some defects in the law, one of which is the omission of a provision for assessment of property not subject to general taxes.

"Under the General Tax Laws all property subject to taxation is assessed by the County Assessor and the valuation placed thereon after review by the County and State Boards of Equalization, is the value for all municipal corporations."

"Property exempt from general taxes has been placed on the Exemption List and is not and has not been certified to the County Clerk as has all other assessments.

"I would like to have an opinion from the Attorney General as to whether or not property exempt from General Taxes, but subject to special taxes, should be assessed by the County Assessor and if so to whom should the assessment be certified."

In accordance with your request we limit this opinion to whatever duty, if any, is imposed upon the County Assessor respecting the making of any assessments under the provisions of Laws of Missouri, extra session, 1933-34, at page 119.

As a general proposition of law:

"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." (State ex rel. Kansas City Power & Light Company v. Smith, 111 S. W. (2d) 513.).

With this general proposition of law before us, we have examined in detail the sewer district act, Laws of Missouri 1933-34, extra session, supra, and have not found any provision whereby it is the duty of the County Assessor to assess property which is exempted from general taxes, but subject to special taxes.

This view is further supported by the court in the case of Normandy Consolidated School District v. Wellston Sewer District of St. Louis County, 77 S. W. (2d) 477, wherein the St. Louis Court of Appeals said, at page 478:

"* *the legislative body has the unquestioned power to require public property located in a benefit district to pay its proportionate share of the cost of the benefit, yet the rule is that public property, which is made use of as an integral part of government in the exercise of a governmental function, is nevertheless to be held exempt from any such special assessment unless in the enactment of the law the lawmakers have manifested a clear legislative intent that such public property shall be subject to the assessment. * * * * * if a clear expression of legislative intent is to be required as the basis for the enforcement of special tax bills against public property strictly devoted to public use, then mere general language in a statute will not suffice to warrant such assessment, and public property will not be held included within the scope of any such statute unless by express enactment or clear implication. * * * * * ."

Inasmuch as the sewer district act, supra, makes no provision for the assessment of property ordinarily exempt from general taxes, it seems to follow that the assessor is without authority to make an assessment. A similar proposition arose in connection with the assessment of additional income by the County Assessor received

by an individual during the year 1926, in the case of State ex rel. Ford v. Gehner, 27 S. W. (2d) 1. In that case the question before the court was whether or not any provisions existed in the income tax law respecting the assessment against the relator of taxes upon his additional income for the year 1926, and the court held that the assessor was without authority to make an assessment against the relator for additional income earned in 1926, or to certify the same to the collector for collection. This was because no statutes existed which permitted the assessor to make an additional assessment. It is believed that this case by analogy is authority for the proposition that the assessor is not required to make a valuation of property ordinarily exempt from general taxes but subject to special taxes.

It further appears from the Sewer District Act, supra, that Section 9 thereof is the exclusive section for the imposition of taxes upon property which abuts the sewer district. This section of the statutes reads as follows:

"It shall be the duty of the Secretary of the Board of Trustees of the incorporated sewer district on or before the 15th day of May in each year to certify to the County Court of the county wherein such incorporated district is situate the amount of money that will be required during the next succeeding year to pay interest falling due on bonds issued and the principal of bonds maturing in such year, and the amount necessary to cover the estimated expenses of maintaining such sewer system in good condition and of maintaining the district corporation with its necessary expenses. On receipt of such certificate it shall be the duty of the County Court at the time it makes the levy for the state, county, school and other taxes to, by order made, levy such a

rate of taxes upon all the taxable property in the said incorporated sewer district as will produce a sum of money sufficient for the purposes aforesaid; provided, that the County Court shall have no authority to levy such tax until the voters of said sewer district shall have voted to incur an indebtedness under the provisions of this Act. On such order being made it shall be the duty of the County Court to cause such rate of taxation to be extended upon the tax books against all the taxable property in said incorporated sewer district and the same shall be collected and remitted to the Board of Trustees of the said sewer district by the collector of the revenue of said county at the time, in the manner, and by the same means as state, county, school and other taxes are collected and remitted. All of the laws, rights and remedies provided by laws of this state for the collection of state, county, school and other taxes, shall be applicable to the collection of taxes herein authorized to be collected. All taxes levied under this act shall be based upon the assessed valuation of lands and other property in the said incorporated sewer district in accordance with the current record of the assessed valuations of all taxable property within said incorporated sewer district as may be determined by the records in the assessor's office of the county and such tax shall be prorated and an equal amount levied upon each \$100.00 of assessed valuation."

It is at once apparent from an analysis of this section, that it is the duty of the County Court to cause a return of taxes to be extended upon the tax books against all

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taxable property in the incorporated sewer district. Also, that the taxes levied are to be based upon the valuation of lands and other property in the sewer district, in accordance with assessed valuations of all taxable property.

CONCLUSION

In view of the above it is the opinion of this department, since the law has failed to provide a means of assessment, that the County Assessor is without authority to value property ordinarily exempt from general taxes which lies within an incorporated sewer district.

Yours very truly,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

RCS/rv