

TAXATION: Illinois taxing authorities may tax that portion
BRIDGES: of Mississippi River Bridge which lies east of
main channel of said river.

January 19, 1942

Hon. Mark Morris
Prosecuting Attorney
Bowling Green, Missouri



Dear Mr. Morris:

This is in reply to your letter of recent date wherein you request an opinion from this department based upon the following statement of facts:

"We have a toll highway bridge here in Pike County which spans the Mississippi River, thus the bridge joins the State of Missouri and the State of Illinois. The bridge has been taken over by Pike County, Missouri and the question has now arisen, since the bridge is now the property of Pike County, Missouri, as to whether the Illinois state authorities can legally levy a tax on the half of the bridge that joins the Illinois County. That is, can the Illinois County hold our county for taxes on that part of the bridge which joins Illinois?"

As we view it, the only question here is -- Does the State of Illinois have authority to tax the portion of the bridge across the Mississippi River which lies east of the center of the main channel of the Mississippi River? If it does have that authority, has it by any exemption provisions of its constitution or statutes relieved the bridge from the tax?

We have examined the Acts of Congress creating the authority to construct this bridge and do not find any prohibition therein which would prevent the imposition of the tax.

We think the case of People ex rel Murray v. City of St. Louis, 126 N. E. 529, is very pertinent here because the same question which you have propounded was before the Supreme Court of Illinois, in relation to the taxing of the Municipal Bridge in St. Louis which terminates on the east bank of the river in Illinois. In discussing this question, the Court said: (l. c. 531)

"Section 3 of article 9 of the Constitution of 1870 provides:

'The property of the state, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.'

"(4-7) Under this constitutional provision it cannot very well be argued that this bridge is exempt as a municipal corporation's property, as the municipality owning it is not a municipality of this state. Moreover, there is a provision in this state for taxing bridges across navigable streams forming the boundary line between Illinois and other states. Hurd's Stat. 1917, sec. 354, p. 2497. All property is subject to taxation unless exempted by the Constitution or statutes passed in accordance therewith.
* * * * *

And, at l. c. 532, the Court further said:

"(8) It is also argued by counsel for appellant that as this bridge was constructed under the authority of an act of Congress it cannot be taxed by the state authorities. It is clear that by this

act of Congress the federal government did not retain exclusive power of legislation on all matters pertaining to this bridge; therefore, under the reasoning of *Moline Water Power Co. v. Cox*, 252 Ill. 348, 96 N. E. 1044, the state authorities retained the power to tax the bridge. The federal government has authorized the construction of several railroad bridges over the Mississippi river near St. Louis, and one of them -- the Eads bridge, as we understand it -- is not only used by railroads, but it is used for street cars, vehicles, and pedestrians, and yet it has been taxed by the state authorities. *People v. St. Louis Merchants' Bridge Co.* (No. 12580) 291 Ill. 95, 125 N. E. 752."

Pursuant to the provisions of Sec. 3, Art. 9, of the Constitution of Illinois, to exempt property from taxation, that state passed an act which provided as follows (Smith-Hurd, Chapter 121, Section 199):

"That when any bridge used exclusively for persons and vehicles, across any stream forming the boundary line between this and an adjoining state, shall be made into a public highway free to all persons and vehicles, such bridge shall not be subject to taxation in this state."

This act was repealed in the Revenue Act of Illinois of 1939, page 886. This Revenue Act also repealed an act entitled "An Act to Provide for the Assessment and Taxation of Bridges Across Navigable Waters on the Boundaries of this State," approved May 1, 1873. The last repealed act referred to, supra, provided a manner of assessment of bridges such as the one here in question. In lieu of these repealed acts, the said Revenue Act of Illinois, 1939, by Section 18 thereof, l. c. 900, provided for the taxing of all real and personal property in that state, By Section 19, thereof, it exempted certain properties. However, we do not think this exemption provisions of the Act would include this bridge which belongs to a county in the State of Missouri. The only county property exempted

in the Illinois Act, Sub-section 6 of Section 19, thereof, is property owned by the county, used exclusively for the maintenance of the poor, swamp or overflowed lands belonging to the county, and public buildings belonging to the county.

From an examination of this Revenue Act, the exemption of bridges such as the one here in question may not have been provided for unless it is in Section 64 of the Act. This section is as follows:

"The personal property of street railroad or bridge companies shall be listed and assessed in the taxing district where the principal place of business is located. The track, road or bridge shall be held to be personal property and listed and assessed as such, in the taxing district where the same is located or laid."

We are not going into that question in this opinion, but are calling it to your attention.

The Circuit Court of Appeals for the Seventh Circuit, United States, in 1935, in the case of City of Louisville et al. v. Babb, 75 Fed. (2d) 162, had before it the question of the authority of the taxing authorities of Indiana to tax the bridge across the Ohio River between Jeffersonville, Indiana and Louisville, Kentucky. The facts as to the obtaining of funds to build that bridge, the charging of tolls to maintain it and to retire the bonds issued for its payment, are similar to the laws of this state which authorize counties to purchase and operate toll bridges. The State of Indiana had an exemption clause which exempted bridges free from toll. (Laws of Indiana, 1929, page 296. c. 94). In the Louisville case the bridge owners contended that the bridge was exempt even though it collected tolls, because it was for "municipal purposes". The Court sustained that view, however, in distinguishing between the provisions of the constitutions of the State of Indiana and the State of Illinois, the court said, (l. c. 168):

"In *People et al. v. St. Louis*, 291 Ill. 600, 126 N. E. 529, 531, the Illinois Supreme Court was construing article 9, sec. 3, of the Illinois Constitution. There the exemption is made by these words 'the property of the state, counties, and other municipal corporations.' So it will be seen that the basis of the exemption of the property above described under the Illinois Constitution is limited to the ownership, though other property may be exempted if used exclusively for certain specific purposes. The language used in the Illinois Constitution shows that the Constitutional Convention realized that the term 'municipal corporations' included the state and counties."

So, with this construction, the basis of exemption from taxes under the Illinois Constitution is in ownership *and not* in use of the property.

The courts seem to hold that a state surrenders its sovereign rights of exemption when it goes beyond its boundaries for the purpose of owning property. This rule is stated in 99 A. L. R., page 1144, as follows:

"As a general rule, property of a municipality located in another state has been held taxable therein; and the courts are fairly in agreement that exemption in the state of the situs of municipal and/or other public property has no application to such property, on the theory that by entering another state the political unit has forfeited all claim to sovereignty."

And, at 81 A. L. R. 1518, the rule is announced and annotated as follows:

"Where a public service plant belonging to a municipality is situated in another state, it is taxable therein, and a

statute of the state where the plant is located exempting the property of municipalities is not applicable.

"Thus, in *Augusta v. Timmerman* (1916; C. C. A. 4th) 147 C. C. A. 222, 233 Fed. 216 (affirming decree of (1915; D. C.) 227 Fed. 171), it appeared that a city in Georgia owned land in South Carolina, the use of which was essential to its water supply. Holding that a South Carolina statute exempting municipal waterworks from taxation was not applicable to that land, the court said: 'unless otherwise expressed, all legislation of a state relating to cities and towns of that state, and not of another state or country. This is for the reason that the state has no control of cities and towns in other states, and from a governmental standpoint no interest in them. For a state to attempt to promote the development of cities and towns outside of its borders by exempting property owned by them from taxation exacted of its own citizens would be so anomalous and contrary to legislative history and governmental policy that nothing but the clearest affirmative expression would warrant such an inference. The general assembly of South Carolina, legislating concerning taxation and exemptions of cities and towns, had no thought of cities and towns not subject to its legislation. The plain purpose was to exempt certain governmental agencies of its own municipal corporations.'

"The provision of the Constitution of Illinois exempting municipal property from taxation has reference only to municipal corporations in Illinois. Hence, a portion of a bridge and approaches thereto in Illinois territory the property of a Missouri city, may secure no exemption under such provision. *People ex rel. Murray v. St. Louis* (1920) 29 Ill. 600, 126 N. E. 529."

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CONCLUSION

With these rules in mind, it is the opinion of this department that since the State of Illinois has not exempted from taxation, this bridge property, and since the State of Missouri and its political sub-divisions forfeit their rights of sovereignty by entering another state, the State of Illinois may therefore tax that portion of the Louisiana Bridge which is located in Illinois, provided the revenue act of that state has set up the proper machinery for assessing and taxing the same.

Yours very truly,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
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