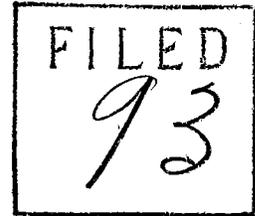


COUNTY COURT DRAINAGE DISTRICTS: 1) The County Court has no authority to employ attorneys to resist the collection of taxes levied by such County Court against property in a County Court Drainage District. 2) The County Collector may employ an attorney to collect delinquent drainage tax at the fees to be allowed by the Circuit Court, as compensation, under Section 12417, R.S. Mo. 1939.

December 6, 1945



Honorable Henry C. Walker
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Mr. Walker:

Your letter requesting an opinion, concerning the affairs of Drainage District No. 4 of Dunklin County, has been received.

Your letter states:

"The County Court instructed me to request an opinion from you in the following points in reference to Drainage District No. 4.

"At the time D. D. No. 4 was organized the benefits assessed were \$20,000 less than the amount of the bonds issued. The County Court later levied additional assessments to pay off the surplus of the bonds. The Supreme Court of Missouri later held said additional assessment and levy invalid. After said decision by said Supreme Court, the owner of the bonds obtained judgment in the United States District Court against D.D. No. 4 for the additional amount due on said bonds. Said U. S. Court later issued a writ of mandamus ordering the County Court to levy a tax to pay off said additional bonds. Said levy was made in 1941. \$1800 has been collected on said levy.

"In 1938 the County Court entered into a contract of employment on behalf of D.D. #4 with three attorneys to represent the District and the landowners in any action brought by the bond holders or county Collector to enforce the payment of said taxes; and agreed to pay them \$3000, if they were successful in defeating the payment of said taxes. A copy of this contract is enclosed. I will number this contract, 'Contract No. 1.'

"The Treasurer and Ex-officio Collector of this county filed a petition, a copy of this petition is enclosed at this term of the County Court, with the County Court asking that an attorney be employed to represent him in bringing a suit to enforce the collection of the delinquent taxes in D.D. #4. The Court is requested to enter into a contract on behalf of D.D. #4, whereby they employ an attorney to bring suit against one land owner for the collection of his delinquent taxes in D.D. #4, paying said attorney \$750 for bringing said suit, and pay him \$1250 additional if he wins it. A copy of said petition and contract is enclosed. I will number this contract, 'Contract No. 2'.

"The County Court wants to know the following points:

"1. (a) Is contract No. 1 valid and binding on Drainage District No. 4 and Dunklin County; and does the County Court have the power and authority to enter into such contract. (b) If said contract is valid and binding, and the County Court has this authority, and the attorneys employed are

successful in defeating the collection of said Drainage taxes, where and how shall the Court or Drainage District obtain the funds with which to pay the \$3000 they will then owe said attorneys?

"2. (a) Does the County Court have the right and authority to enter into contract No. 2 on behalf of said Drainage District, and pay more than the fees allowed by statute for suing and collecting delinquent Drainage taxes?
(b) If it is held that the Court does have this right and authority, from what funds may they legally pay said attorney fee, and how shall said funds be obtained?

"I am enclosing certain memorandum furnished me by the attorney interested in contract No. 2."

Section 12433, gives the County Court of your County the same control over the affairs of said Drainage District No. 4, as it does over County business.

In giving effect to Section 12433, R.S. Mo. 1939, our Springfield Court of Appeals in the case of Drainage District vs. Hetlage, et al., 102 S.W. (2d) 702, 1.c. 708, in a decision construing said Section, with respect to serving processes on a Drainage District, and in holding that the County Court has the exclusive control and management of Drainage Districts, organized under County Courts, said:

"In other words, the county court, as a court, manages such county court drainage districts in the same manner as it manages the affairs of the county.
* * * ."

The County Court of Dunklin County has no duty to perform in, nor may it exercise the privilege of, entering into a contract for or on behalf of such Drainage

District for the purpose of providing funds or taking any part whatsoever, in the defense against the prosecution of suits to collect the drainage tax levied and assessed against property located in said Drainage District at the direction of the Federal Courts. The right or privilege of resisting the collection of such taxes is the private right alone of the individual persons who are the owners of property in said Drainage District. It is not a right of the Drainage District itself, as such, and the County Court as manager of the Drainage District is not concerned, nor is the Drainage District, in the defense of such tax suits. The County Court of Dunklin County has no lawful authority or right to enter into a contract as manager of said Drainage District for the benefit of private individuals who are the owners of the property assessed with such tax. This is so because the Constitution of this State forbids such action by any of the public bodies of the State. Such public bodies as the Legislature, County Courts, municipalities and other public corporations, may not appropriate public funds derived from any source whatever to the aid or benefit of any private person. Section 38 (a), Article III of the new Constitution of Missouri so declaring, is as follows:

"The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation * * *."

Section 25 of Article VI of the new Constitution is as follows:

"No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except that the general assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized police force or fire department

and the widows and minor children of the deceased members, and may authorize any city of more than 100,000 inhabitants to provide for the pensioning of other employees, and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services, and to their beneficiaries or estates."

The above quoted provisions of the Constitution would prohibit the appropriation by any sub-division of the State of any public funds for any private purpose, and, we believe, would prohibit the County Court of Dunklin County from entering into a contract, the effect and result of which would eventuate in lending the public credit and the grant of public funds to individuals.

The rule of law in support of the terms of our Constitution above quoted is stated in 15 C.J., page 590, as follows:

"The constitutions of several states either have prohibited, or do prohibit, counties from giving any money or property, or loaning its credit, to or in aid of any corporation, association, or individual, or from becoming a stockholder, either directly or indirectly, in any joint stock company, corporation, or association. Such prohibitions apply only to aid to individuals, associations, companies, and corporations engaged in purely private enterprises, or enterprises only quasi public; * * *".

In construing the same provisions in the Constitution of Missouri of 1875, which was in almost the identical language of Section 38 (a) of our present Constitution,

supra, our Supreme Court in the case of Kavanaugh vs. Gordon, 244 Mo. 695, l.c. 722, said:

"Furthermore there can be no two ways about it that it is special legislation of an undisguised and typical kind, granting a special or exclusive right or privilege to an individual, Nolen, in violation of Par. 26, Sec. 53, of Art. 4 of the Constitution, supra. Special legislation is that made for an individual as distinguished from a class, precisely as here. (State ex rel. v. Gordon, 236 Mo. l.c. 162, et seq.)"

In the case of State ex rel. vs. Kimmel, 256 Mo. 611, l.c. 639, again construing such terms of the Constitution of 1875, our Supreme Court said:

"In the next place, it is in the teeth of section 46, article 4, of the constitution, which, barring the one instance of 'a case of public calamity,' denies to the General Assembly the power to make any grant or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever. * * *".

In the case of Elsberry Drainage District vs. Harris et al., 267 Mo. 139, the Supreme Court had before it a case bringing the above quoted terms of the Constitution of 1875 strictly to the action of Drainage Districts, holding that they are included in the public bodies prohibited from engaging in any activities, including the levying of taxes for a private enterprise. The Court, l.c. 161, 162, said:

"* * * The drainage district in these respects are agencies of

the State, and it is not necessary to say that they have no more power to levy a tax to aid a purely private enterprise than would the State itself. The very fact that they are clothed with these extraordinary powers imposes upon the courts in the exercise of their jurisdiction, the duty of watchfulness to see that such powers are not prostituted to the purposes of private speculation. * * *".

Section 25, Article VI of the new Constitution, supra, prohibits any and all subdivisions of the State from lending credit or granting public funds to an individual with the same purpose and effect in like manner as Section 38 (a), Article III, of the new Constitution, supra, prohibits the Legislature from passing laws for such purposes.

We believe the above cited authorities conclusively prohibit the County Court of Dunklin County from entering into said contract designated No. 1.

Section 12416 of Article 3, Chapter 79, R.S. Mo. 1939, requires the County Collector to collect the drainage taxes assessed and levied by the County Court. That part of said Section 12416, so providing, is 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. * * *".

The letter of explanation accompanying the request for an opinion on this matter recites that said Drainage District now has on hand the sum of \$1,800, paid as taxes

by various persons in response to the levy to make up the deficiency for the payment of the difference between the benefits and the amount of the bonds which were sold, under the writ of mandamus issued by the United States District Court, and affirmed by the United States Circuit Court of Appeals. It is said that the Collector of Dunklin County, has been advised that said sum of \$1,800, may be appropriated as part payment of an attorney's fee in the prosecution of said tax suits. We believe said \$1,800 may not be used for such purpose.

Section 12418, Article 3, Chapter 79, R.S. Mo. 1939, governing County Court Drainage Districts, wherein said Section providing for the payment of bonds of the Drainage District from the taxes levied and assessed against the property in said district, states:

"* * * The proceeds of any taxes so appropriated shall be used for the purpose of paying the principal and interest of said bonds and no other.
* * * "

We do believe that the County Collector may employ an attorney to file and prosecute the suits to collect the said delinquent drainage tax, but he may only be compensated as provided in Section 12417, R.S. Mo. 1939.

Section 12417, R.S. Mo. 1939, provides that the Circuit Court may allow a reasonable attorney's fee in such cases.

That part of said Section 12417, providing the allowance of an attorney's fee in such cases is as follows:

"All drainage taxes provided for in this article, including maintenance taxes, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee to be fixed by the court and taxed as costs in the action brought to enforce payment, shall from date of the levying of the same by the county court as provided herein, until paid, constitute a lien, to which only the lien of the state

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for state, county, school and road taxes shall be paramount, upon all of the lands assessed, and shall be collected, in the same manner as state, county and school taxes upon real estate are collected. * * * "

The attorney's fee when allowed by the Court constitutes, along with other costs, a lien upon the lands assessed for the original tax. This provision makes absolutely secure the fee of the attorney for the Collector when the same is allowed by the Circuit Court in such cases. This is the method pointed out by the statutes of this State for the employment of an attorney and providing the means of his compensation, and it must be followed, we believe.

With the certainty of the fee allowed by the Court being paid as costs in any such case by reason of the lien created by the statutes, we believe the County Court or the Collector will have no great difficulty in employing counsel in such cases, who would be allowed to collect for his compensation the fee allowed by the Circuit Court in each case.

CONCLUSION.

1) It is, therefore, the opinion of this Department that said contract No. 1 is invalid and not binding upon Drainage District #4 in Dunklin County, Missouri, because the County Court as manager of such Drainage District, is prohibited by our Constitution from entering into such a contract since the effect and result of such contract would be to lend the public credit and grant public funds to private individuals.

2) It is the further opinion of this Department that the County Collector of Dunklin County, may enter into a contract for the employment of counsel to collect

Honorable Henry C. Walker

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delinquent drainage district taxes, the compensation to be paid such attorney to be the fee allowed by the Circuit Court as costs in any such suit as is provided in Section 12417, R.S. Mo. 1939.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

W. O. JACKSON
(Acting) Attorney General

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