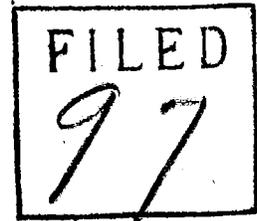


TAXATION AND REVENUE: Construction of Sec. 3, Art. X, and Sec. 23, Art. IV, Constitution of Missouri of 1945, and of Secs. 2 and 5 of the Schedule appended thereto.

April 27, 1945



Senator H. R. Williams
Honorable Randall R. Kitt
Co-Chairmen
Joint Planning Committee of the General Assembly
Jefferson City, Missouri

Gentlemen:

Reference is made to your letter under date of April 18, 1945, requesting an official opinion of this office, and reading as follows:

"Pursuant to a resolution adopted by the Joint Planning Committee of the General Assembly, your opinion is respectfully requested upon the following:

"Under the provisions of Section 3 of Article X of the present constitution with respect to the assessment and collection of taxes within the same fiscal or calendar year and the provisions of the schedule, particularly Section 5 thereof, would statutory provisions, present or future, providing for the collection of taxes after July 1, 1946, upon the assessment to be made as of June 1, 1945, be valid?

"While this question may be moot at the present time, it is one now confronting this Committee and the General Assembly. Due to its importance and urgency, your official opinion at your earliest convenience will be greatly appreciated by this Committee and various members of the legislature."

Your inquiry resolves itself into two component parts:

(1) Will the present statutes permit the collection of taxes subsequent to July 1, 1946, based upon an assessment of property made as of June 1, 1945, as provided by such statutes?

(2) Can statutes be enacted by the General Assembly in the future providing for the collection of taxes subsequent to July 1, 1946, based upon an assessment of property made as of June 1, 1945?

In view of the fact that under the present statutes the only taxes which could become due subsequent to July 1, 1946, are general property taxes, we have confined this opinion to that type of taxes.

I.

With reference to Part (1) of your inquiry, it is necessary to consider the present scheme for the collection of taxes. It is provided by the existing statutes that assessments be made as of June 1 of each year, that after adjustment and corrections of such assessments by the county and state boards of equalization, the county court makes levies of taxes based upon such assessments, and that such taxes so assessed and levied be due and payable not later than December 31 of the ensuing calendar year.

The question of time being pertinent to the matter at hand, we note that the existing statutes require the assessment to be made as of June 1; that action be taken by the state board of equalization commencing the last Wednesday of February of the following year; that action be taken by the county board of equalization thereafter, which cannot be completed prior to the fourth Monday in April following; that thereafter, as soon as may be, the county court shall make the levy; that the county clerk thereafter extends the taxes, having ninety days in which to do so; that thereafter, as soon as may be, the tax book be delivered to the collector; and that the taxes so assessed and levied become due upon delivery of the tax book to the collector.

Article X, Section 3, of the Constitution of 1945, reads, in part, as follows:

" * * * All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. * * * "

Referring to the existing statutes pertaining to the assessment and collection of taxes, it is apparent that they are inconsistent with the quoted portion of the Constitution of 1945. Therefore, Section 2 of the Schedule appended to the Constitution of 1945 becomes pertinent. It reads, in part, as follows:

" * * * All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

This would have the effect of keeping the existing statutes operative until July 1, 1946, in the absence of action being taken by the General Assembly, but since the collection statutes would expire long before the due date of the taxes, no method would exist to enforce collection thereof.

It is true that the lien of the State for its taxes would attach under existing statutes, provided that the order fixing the levy be made by the county court prior to July 1, 1946; it having been so held in *State v. Childress*, 134 S. W. (2d) 136, from which we quote:

"The state's lien for taxes 'does not accrue and become a fixed encumbrance until the amount of the tax is determined by an annual assessment of the land and annual levy of the tax.' *McAnally v. Little River Drainage District*, 325 Mo. 348, 28 S. W. 2d 650, 651."

The General Assembly could not enact valid laws to provide for the enforcement of the lien, even though attached, because whatever statutes are enacted must conform to the Constitution of 1945, and any laws looking to the enforcement of the State's

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lien for such taxes would contravene Article X, Section 3, above quoted, in that the taxes sought to be collected would not have been based upon an assessment made in the same fiscal or calendar year.

We have also considered Section 5 of the Schedule appended to the Constitution of 1945, in connection with this phase of your inquiry. It reads, in part, as follows:

" * * * all fines, taxes, penalties and forfeitures assessed, levied, due or owing prior to the adoption of this Constitution shall continue to be as valid as if this Constitution had not been adopted."

This has the effect of saving only taxes assessed or levied prior to the adoption of the new Constitution. The new Constitution was adopted as of March 30, 1945; consequently, Section 5 is inapplicable to assessments made as of June 1, 1945.

We conclude from the above that taxes assessed and levied under existing statutes could not be collected subsequent to July 1, 1946.

II.

With reference to Part (2), we believe the following to be germane:

The pertinent portion of Section 3, Article X, to which you refer, reads as follows:

" * * * All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. * * * "

It is therefrom quite apparent that under the Constitution of 1945 the General Assembly is authorized to provide a scheme for the assessment, levy and collection of taxes, sub-

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ject to the limitation that such scheme be one that shall be completed within a period of one year. The year may be either the calendar year or the fiscal year. The fiscal year of the state is defined in Section 23, Article IV, of the Constitution of 1945, from which we quote:

"The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year."

We are of the opinion that the above quoted portions of the Constitution of Missouri of 1945 are controlling with respect to the question proposed in your letter of inquiry. We have also considered Section 5 of the Schedule appended to the Constitution, but do not consider it applicable to the matter at hand, as we think that Section 5 is merely a saving clause designed to protect rights which had become fixed prior to the adoption of the Constitution, and of course could not affect assessments made June 1, 1945, such assessments being subsequent to the date of the adoption of the Constitution.

CONCLUSION

In the premises, we are of the opinion that taxes based upon assessments made as of June 1, 1945, under existing statutes, could not be collected subsequent to July 1, 1946, and that the General Assembly cannot provide by statutory enactment for their collection, as such statutes would be in contravention of Article X, Section 3, of the Constitution of 1945.

We are of the further opinion that after harmonizing the above quoted provisions of the Constitution of 1945 and construing them together, that the General Assembly is not authorized to provide a scheme for the collection of taxes subsequent to July 1, 1946, based upon assessments made June 1, 1945; and that statutory enactments to that effect would be invalid as being in contravention of Article X, Section 3, of the Constitution of 1945, in that such scheme, of which such statutory enactments would form a part, would not be completed

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from assessment to collection of taxes within either the calendar or fiscal year subsequent to June 1, 1945.

Respectfully submitted

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APPROVED:

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Attorney General

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