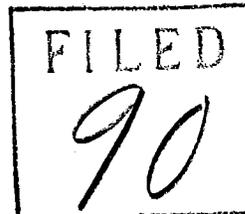


BUILDING AND LOAN ASSOCIATIONS: Real and tangible personal property assessable by county assessor under House Bill 469.

CONSTITUTION: State alone may assess intangible personal property under Article X, Section 4c, Constitution 1945.

February 1, 1946



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Honorable Willard S. Tucker
Assistant Prosecuting Attorney
Springfield, Missouri

Dear Sir:

General Taylor wishes to acknowledge receipt of your recent request for an opinion from this department, which reads as follows:

"The repeal of Section 10963 of Article 2, Chapter 74, R. S. Mo. 1939, has presented a problem of considerable importance. This Section provides the means by which Building and Loan Associations are taxed. The assessors in fixing the tax list under this Section have always refrained from assessing the personal assets of the Associations. Now that the Section has been repealed by House Bill 469, and the new law is silent as to means by which these Associations can be taxed, our Assessor desires an opinion as to whether or not the personal assets of the Associations are now taxable.

"As this is a matter of general importance throughout the State we are submitting the question to your office and will appreciate an early reply."

Under the new Constitution adopted in 1945, taxable property is divided into three classes, Article X, Section 4(a), provides:

"All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The general assembly, by general law, may provide for further classification within Classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types."

The basis of assessment of tangible property is provided for in the first sentence of Article X, Section 4(b), which section states:

"Property in Classes 1 and 2 and subclasses of Class 2, shall be assessed for tax purposes at its value or such percentage of its value as may be fixed by law for each class and for each subclass of Class 2. Property in Class 3 and its subclasses shall be taxed only to the extent authorized and at the rate fixed by law for each class and subclass, and the tax shall be based on the annual yield and shall not exceed eight per cent thereof."

House Bill 469, referred to in your writing, undertakes to deal only with property of Class 1 and Class 2. In the explanation sheet of House Bill 469 it is stated that "sections and parts of sections dealing with intangible property have been omitted." Therefore, Section 10963, R. S. Mo. 1939, was repealed in the passage of House Bill 469. The reason for the omission of sections concerning intangible property becomes apparent from a reading of Article X, Section 4(c), Constitution of Missouri, 1945, which provides:

"All taxes on property in Class 3 and its subclasses, and the tax under any other form of taxation substituted by the general assembly for the tax on bank shares, shall be assessed, levied and collected by the state and returned

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as provided by law, less two per cent for collection, to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy."

The assessment, levying and collection of taxes on intangible personal property is to be handled by the state as provided in this section to the exclusion of county assessors.

Section 10963, R. S. Mo. 1939, referred to in your letter, provided as follows:

"All parties holding stock or shares as owners or in trust in any building and loan association in this state, on which no loan has been obtained from such association, shall be required to give a just and true list of the same to the assessor, with the actual cash value of each share on the first day of June in each year, and the tax shall be levied upon said shares, and collected from such holder or depositor of the same, as taxes on other personal property; and any failure on the part of such owner, holder or depositor of such shares shall subject such holder to the same penalties now provided for failure to give to the assessor a true list of all taxable property, verified by affidavit."

The taxable property encompassed by this section is stocks and bonds, which is intangible personal property of Class 3 and, as such, assessable only by the state.

Regarding real and tangible personal property of incorporations, Section 27 of House Bill 469, provides:

"The real and tangible personal property of all corporations operating in any county in the State of Missouri and in the City of St. Louis, and subject to assessment by county or township assessors, shall be assessed and taxed where situated."

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The case of *Musler v. Homestead Building and Loan Association of St. Louis*, 66 S. W. (2d) 152, l. c. 154, holds:

"Now a building and loan association, while peculiar in its features and having powers and functions closely fixed and circumscribed by statute, is nevertheless a business corporation."

Therefore, in so far as real and tangible personal property of building and loan associations are concerned, the county assessor may assess them as other corporations.

Conclusion

It is the opinion of this department that county assessors are authorized under House Bill 469 to assess the real and tangible personal property of building and loan associations.

It is our further opinion that under Article X, Section 4(c), Constitution of Missouri, 1945, county assessors may not assess any intangible personal property whether it be that of building and loan associations or otherwise.

Respectfully submitted,

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APPROVED:

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