

LEVEE DISTRICTS) No appeal lies to State Tax Commission on assess-
TAXATION) ments on formation of county court levee districts.

November 28, 1949

Filed: #27

Honorable Clarence Evans
Chairman, State Tax Commission
Jefferson City, Missouri



Dear Sir:

We have received your request for an opinion of this Department, which request is as follows:

"The State Tax Commission received an appeal from one Clarence Hall of Holt County, Missouri covering the assessments for benefits on part of the lands owned by him in Holt County Levee District #7. The Commission heard the case on Tuesday, October 18 and would appreciate some legal advice from your office.

"There are several items involved in this appeal which are as follows:

- "1. In assessing lands for benefits in a Levee District should an assessor place the same valuation on all lands? We refer to Sec. 12561, page 3316, R. S. 1939.
- "2. Can a land owner in a Levee District appeal to the Board of Equalization year after year on an assessment for benefits? We refer to Sec. 12569, Page 3316, R. S. 1939.

"The case in question is as follows:

"For the year 1948, the appellant Clarence Hall attended the land owners meeting and voted for the benefit assessment of \$25 per acre on all the land in the Levee Districts.

The majority of the land owners voted the same way and consequently the assessment was passed. Later at the Board of Equalization, Clarence Hall appealed on two grounds. 1. That his ground between the Levee and the River should not be subject to benefit assessment and this was granted by the board. 2. That some of his ground in this district should not be assessed for benefits, being either too high or too low and consequently not deriving any benefit. The board rejected his appeal and he failed to appeal to the State Tax Commission in 1948 claiming that the County Clerk had promised to advise him of the decision of the Board of Equalization but failed to do so in time for him to appeal to the State Tax Commission. In 1949 he again appealed to the County Board of Equalization and was rejected on the grounds that they had no authority to make any changes after the first year. He then appealed to the State Tax Commission and the case was heard."

Although, as a matter of policy, we answer only questions asked of this department in a request for an opinion, nevertheless, we feel that in the present situation, the matter in question should be disposed of by your commission on a basis not suggested in your request.

Article VIII, Chapter 79, R. S. Missouri, 1939, deals with the organization and operation of county court levee districts. Section 12569 of that article provides for appeals to the county board of equalization from assessments upon the formation of such levee districts, as follows:

"Section 12569. The county board of equalization and the court of appeals shall have and receive the same jurisdiction over the lands taxed for the purposes in this article specified, as conferred by the general laws of the state in the assessment of property for state and county purposes, and complaints of all persons who think themselves aggrieved by the assessment of their lands shall be made at the same time required by the general revenue laws of the state. All corrections made in the assessment of lands

by the county board of equalization or the court of appeals, shall be certified to the board of directors by the clerk of the county court where such corrections are made."

No provision is found in Article 8 of Chapter 79 for an appeal to the State Tax Commission. The only provision which might be relied upon as a basis for such appeal is Section 11033.14 (5), Missouri R.S.A., Laws of 1945, page 1805, 1812, which provision reads:

"Every owner of real property or tangible personal property shall have the right of appeal from the local boards of equalization under rules prescribed by the State Tax Commission. Said Commission shall investigate all such appeals and shall correct any assessment which is shown to be unlawful, unfair, improper, arbitrary or capricious."

That section, when considered in its entirety, clearly has reference to procedures in the collection of taxes generally. Benefits assessed upon the construction of levees have been held not to be taxes within constitutional provisions. *Morrison v. Morey*, 146 Mo. 543, 48 S.W. 629.

Furthermore, laws governing the organization of levees and drainage districts are codes unto themselves. *State ex rel. Scott v. Trimble*, 308 Mo. 123, 272 S.W. 66. Statutes in other articles providing for determination of benefits to be assessed upon construction of levees and drainage ditches have been held to constitute a complete scheme for such determinations. See Sections 12338, 12509 and 12410, R. S. Missouri, 1939. Section 12338, found in Article 1 of Chapter 79, and relating to circuit court drainage districts, and Section 12509, found in Article VII of Chapter 79, and relating to circuit court levee districts, both provide for the filing of exceptions by land owners to the reports of commissioners appointed to assess benefits and damages in the districts. Such exceptions are heard by the circuit court and its findings are final, except that the owner of land within the district may appeal on question of whether or not just compensation has been allowed for property appropriated, and second, whether proper damages have been allowed for property prejudicially affected by the improvements. Thus, there is no appeal on the question of assessment of benefits.

The scheme provided for fixing of benefit assessments in such cases has been held to afford the land owner due process of law. *Bartlett Trust Company v. Elliott*, 30 Fed. (2d) 700, 704. In that case the court quoted from the case of *Hodge v. Muscatine County*, 196 U. S. 276, 25 S. Ct. 237, 49 Law Ed. 477, as follows:

"If the taxpayer be given an opportunity to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi judicial character or before a tribunal, provided by the state for the purposes of determining such questions, due process of law is not denied."

Therefore, inasmuch as no provision is made in Article 8 of Chapter 79 for appeal from the decision of the county board of equalization to the State Tax Commission, we are of the opinion that the State Tax Commission has no jurisdiction to hear such appeal, and that the action of the commission in the case before it should be to dismiss the appeal for want of jurisdiction.

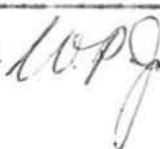
CONCLUSION.

Therefore, this department is of the opinion that no appeal lies from the county board of equalization to the State Tax Commission regarding benefits assessed upon formation of county court levee districts under Article 8 of Chapter 79, R. S. Missouri, 1939.

Respectfully submitted,

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APPROVED:

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RRW/feh