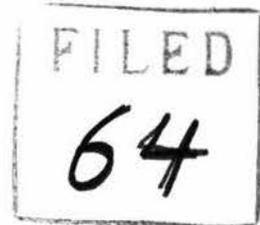


JUDGMENTS:

The recording, docketing and indexing of a judgment is constructive notice to all parties in interest of the contents and effect of the judgment.

February 21, 1950

Honorable M. E. Morris
State Treasurer
State Capitol Building
Jefferson City, Missouri



Attention: Honorable Haskell Holman

Dear Mr. Morris:

This is in response to the request of Mr. Haskell Holman for an opinion whether your office should be directly notified and if so, by whom, of the recent decision of the Supreme Court of this State, in the case of New Franklin School District #28, et al., Respondents, vs. G. H. Bates, Director of Revenue, et al., Appellants, appealed from the Circuit Court of Cole County, Missouri, before complying with the decision, directing the State Treasurer to set aside and place in the State Public School Moneys Fund twenty-five per cent of the fines assessed by the Supreme Court against respondents in the case of State ex inf. Taylor, Attorney General vs. American Insurance Company, et al.

Your letter is as follows:

"It has generally come to our attention that the Supreme Court of Missouri has recently rendered a decision in reference to the case of State ex inf. Taylor, Attorney General v. American Insurance Company, et al., 200 S.W. (2d) 1, in which decision the Court held that the fund derived from the fines and penalties assessed against the respondent insurance companies in said case was State revenue, and directing the State Treasurer, under Section 3, Article IX of the Constitution of Missouri, 1945, be required to set aside and place in the State Public School Moneys Fund 25% of said fund.

Honorable M. E. Morris

"There arises the question whether the State Treasurer should be directly notified, and if so by whom, of the decision before undertaking to so set aside that part of the said fund.

"Will you please give us your opinion on this question?"

The original defendants in the cause No. 41308 in the Supreme Court were Mount Etna Morris, Director of Revenue, B.H. Howard, Comptroller, Forrest Smith, State Auditor and Robert W. Winn, State Treasurer. During the pendency of said case in the Supreme Court and before September 19, 1945, the above defendants had resigned their offices, or their terms of office had expired, and the following defendants, as their respective successors in office were, by stipulation, substituted for them and were made parties defendants in said cause, to-wit: G.H. Bates, Director of Revenue, Elmer Pigg, Comptroller, W.H. Holmes, State Auditor and Mount Etna Morris, State Treasurer. Thus in your present official position you were a party to the suit at the time of the final judgment.

In asking if you should be directly notified of the decision of the Supreme Court, we understand you to inquire if you should be personally served with a written notice or a copy of the decree of the Supreme Court, or a copy of the judgment of the trial court, upon remand of the case, by some officer or person authorized to actually deliver such written notice to you, and if so, what officer should serve such notice.

The Supreme Court held in the decision that the fund in question is "state revenue" and that under Section 3(b) of Article IX of the Constitution of Missouri, 1945, twenty-five per cent of the fund is required to be set aside and placed to the credit of the public school fund.

The mandate from the Supreme Court, we are advised by the Circuit Clerk, was received by his office on January 28, 1950, and thereupon the Circuit Court of Cole County made its record entry of judgment in conformity with the decree of the Supreme Court.

Parties to an action are presumed, for their own information, to keep in touch with the proceedings in the trial court and the appellate court and, in case of a reversal of the cause, as was the case here, with the orders and judgments thereupon made by the trial court in conformity with the opinion of the appellate court. But whether they do so or not, the parties have constructive notice of the contents and effect of the judgment by the record itself, which consists of entering the judgment, docketing and indexing

Honorable M. E. Morris

as to book and page. Notice has been said by textwriters and the Courts to be equivalent to information, and may be synonymous therewith. (Jackson Co. ex rel. Farley vs. Schmid, et al., 141 Mo. App. 229, 46 C.J. 538). 46 C.J., pages 541 and 542, defines direct and indirect notice as follows:

"'Direct notice' has been defined as that kind of actual notice which consists of direct information of a fact brought home to a party; and 'indirect notice' as that kind of actual notice which consists of any knowledge of circumstances leading to knowledge of such facts."

The entering of judgment by the Circuit Court of Cole County, in compliance with the decree of the Supreme Court, on January 28, 1950, became the final judgment in the case. In this character of case our statutes do not provide that a party to the suit is entitled to direct actual notice of the rendition of the judgment. The St. Louis Court of Appeals in the case of Inter-River Drainage District of Missouri vs. Henson, et al., 99 S.W. (2d) 865, in defining the effect and extent of a judgment as constituting constructive notice, l.c. 873, said:

"* * * The recording of a judgment, properly entered and docketed, is notice of what it contains or recites, as well as such facts as might be fairly inferred from its recital, and such record carries with it constructive notice of the facts therein expressly recited as well as such facts as might be fairly inferred from its recitals."

There are some classes of cases, such as mandamus, injunction, prohibition and perhaps others, where a party to a suit, or an administrative officer, or a judicial officer, who is commanded to perform certain acts in a certain way, would be entitled to a copy of the judgment as actual notice of the judgment or order so requiring such performance. But the case in consideration was not one of such classes. It was a suit for declaratory judgment, and no such notice is required to be given the parties, nor is it due them. The record entry of the Circuit Court of Cole County, entered as aforesaid, on the date aforesaid, complying with the decree of the Supreme Court in the cause, constitutes constructive notice and information for all persons and officials in interest of the terms and effect of the judgment and is the only notice the State Treasurer should have to enforce the terms of the judgment by setting aside, twenty-five per cent of the fund, as by the Court

Honorable M. E. Morris

directed, for the benefit of the public schools. You were authorized to proceed therein at any time after the Circuit Court of Cole County so made its record on January 28, 1950, without direct personal notice being given you. It follows that, since no direct personal notice of the recording of the judgment to the parties in the case is required, there is no person, official or otherwise, who could be authorized to give a notice in such cases.

CONCLUSION

It is, therefore, the opinion of this Department that:

1) It is not required that the State Treasurer be given direct personal notice of the entering of the judgment by the Circuit Court of Cole County in the named case.

2) That the entering of the judgment, docketing and indexing the judgment as to book and page where recorded constitutes constructive notice to all the parties in interest in the cause of the contents and effect of the judgment, and that such record is sufficient notice to the State Treasurer upon which he was authorized after the entering of the judgment of record to proceed to execute the terms of the judgment.

3) That because direct personal notice is not required to be given to the State Treasurer in the premises, there is no authority, by statute or otherwise, for any person or official to give notice to the parties to the cause.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General