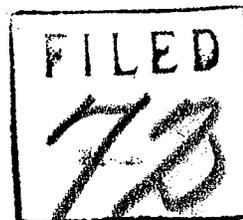


COUNTY LIBRARIES:
TAXATION:
STATE AID:

1. Delinquent taxes collected for a public library during any fiscal year are to be counted in determining if tax income for such year yields one dollar or more per capita according to latest Federal census so that Library is eligible for State aid in accordance with second standard of Subsection 181.060, Cumulative Supplement 1955. 2. That if tax rate voted for a public library is one or more mills and rate collected is less than one mill, but such tax income yields one dollar or more per capita for previous year, according to population of latest Federal census, as provided by second alternate standard of Subsection 2, Section 181.060 Cumulative Supplement 1955, such library is entitled to State aid.

November 2, 1956

Honorable Paxton P. Price
State Librarian
State Office Building
Jefferson City, Missouri



Dear Mr. Price:

This department is in receipt of your recent request for a legal opinion which reads in part as follows:

"This office would be grateful to you for furnishing a legal opinion on the following questions concerning the interpretation of the law:

(1) Are delinquent taxes collected for the local Library Fund during any given county fiscal year to be counted in determining the eligibility of the local library for State Aid to Public Libraries in compliance with the eligibility requirements set forth in Section 181.060, RSMo. 1955 Supplement? Or, is only the tax yield from a fixed rate levied against the fixed assessed valuation for any given county fiscal year to be counted toward eligibility?

"For computing any given library's eligibility for State Aid under Standard (2) in Section 181.060, 2, it is necessary to know just what tax yields are to be counted since county tax collectors deposit in the treasurer's Library Fund record all tax yields, both current yields and delinquent tax yields.

(2) If the tax rate voted is one or more mills and the rate collected is less than one mill, but produces an amount equal to or exceeding one dollar per capita, is the library eligible to receive State aid under the provisions of Section 181.060, Cumulative Supplement 1955?"

Section 181.060, RSMo. Cumulative Supplement 1955, is referred to in the opinion request and reads in part as follows:

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"1. The general assembly may appropriate moneys for state aid to public libraries, which moneys shall be administered by the state librarian, under rules and regulations of the state library commission.

"2. At least fifty per cent of the moneys appropriated for state aid to public libraries shall be apportioned to all public libraries established and maintained under the provisions of the library laws or other laws of the state relating to libraries. The allocation of the moneys shall be based on an equal per capita rate for the population of each city, village, town, township, school district, county, or regional library district in which any library is or may be established, in proportion to the population according to the latest federal census of the cities, villages, towns, townships, school districts, county or regional library districts maintaining tax supported public libraries. No grant shall be made to any public library if the rate of tax or the appropriation for the library should be decreased below the rate in force on December 31, 1946. Grants shall be made to any public library, according to two alternate standards:

(1) To any public library which has at least a one-mill tax voted in accordance with sections 182.010 through 182.460 RSMo, or

(2) To any public library for which the tax income yields one dollar or more per capita for the previous year according to the population of the latest federal census."

The above quoted section provides that grants of State aid are made to public libraries found to be qualified under two alternate standards which are: (1) To any public library which has at least a one mill tax voted in accordance with Sections 182.010 through 182.460, RSMo. or, (2) To any public library for which the tax income yields one dollar or more per capita for the previous year according to the latest Federal census.

It is necessary for a library to meet one or the other of these standards and is not required to meet both of them in order to be eligible for State aid.

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The first inquiry makes no reference to the one mill tax rate stated in the first standard, but is concerned with whether or not delinquent taxes can be counted in determining the necessary one dollar per capita yield of the tax income for the previous year, as referred to in the second standard. Therefore, our present efforts will be directed to discussing that part of Section 181.060.

The answer to the first inquiry will depend solely upon the construction placed on the second standard of said section, and while there are many rules of statutory construction which might be of assistance here, we believe that it will be necessary to call attention to and follow only one such rule. We refer to the primary rule that a statute is to be construed in such a manner as to give effect to the intent of the Legislature, if possible, from the words used in the statute, and that in the absence of any indication that the words were used in a technical sense, they are to be given their plain or ordinary meaning. This principle is so well understood and so long established that no useful purpose would be served by citing legal authority to support it.

With this rule in mind we find it proper to consider the intended meaning of a few of the terms used in Section 181.060, supra, before attempting to construe the entire meaning of the second standard given in said section. We refer to the terms "tax income" and "previous year," which we believe to be of particular significance to our present purpose.

We are unable to find any Missouri statutes or court decisions defining these terms, hence we turn to the decisions of other courts for definitions of same. The terms "this year," "previous year," and "current year," were defined in the case of Clark v. Lancaster County, 96 NW 593, and at l.c. 599 the court said:

" * * * It must be conceded that ordinarily, when we use the terms 'this year,' 'the current year,' or 'the previous year,' we mean in each instance the calendar year in which the event under discussion took place and the one before it. * * *"

Also, in the case of Syracuse Savings Bank v. Brown et al., 42 N.Y. Supp. 2nd, at l.c. 158, the court defined some of the terms used in the Soldiers' and Sailors' Relief Act of 1940, as amended, and said:

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" * * * In my opinion, 'order previously made' means order made before and at any time up to the judgment of foreclosure. Previous is synonymous with 'next prior to' or 'next preceding' and does not mean a period prior to the date of the Soldiers' and Sailors' Civil Relief Act or the date the soldier entered the military service. State ex rel. Lewis v. Board of Education of New Haven, 88 Conn. 436-440, 91 A. 529; State of Iowa v. Gunagy, 84 Iowa 177, 50 N.W. 882. Any other construction would take from the language its ordinary significance. It would leave mortgagees without protection if a soldier defendant entered the service before the act took effect or before the action was begun (John Hancock Mut. Life Ins. Co. v. Lester, 234 Mass. 559-561, 125 N.E. 594); or where they are unable to satisfy the Court that no defendants are in such service."

While the term "tax income" was not defined in the case of Lamar W. & L. Company v. City of Lamar, 128 Mo. 188, one of the issues raised was whether the annual tax limitation fixed by Sections 11 and 12, Article X, Constitution of Missouri, 1875, prohibits fourth class cities from collecting a special tax annually for a public water supply in excess of the constitutional limitations. It was held that in determining what constitutes "income and revenue provided" for one year, within the meaning of Section 12, Article X of the Constitution, all sources of income, including that from licenses, should be estimated.

Again, considering the provisions of the statute before us, these questions are presented: Was it the legislative intent that any public library whose tax income (i.e., proceeds from current and delinquent taxes) collected from all sources yields one dollar or more per capita for the previous year is entitled to state aid, or was it the legislative intent that any public library whose tax income consisting of taxes assessed and collected the same year and which yields one dollar or more per capita for the previous year is entitled to state aid? Needless to say, if the construction were adopted to which we referred in the second question, any income from delinquent taxes collected during the previous year could not be considered as income for such previous year.

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On the other hand, if the construction were adopted to which we have referred in the first question, then it is obvious that all taxes collected during the previous year, whether current or delinquent, would be considered as tax income, and used as a basis for determining whether the tax income yielded at least one dollar or more per capita and the eligibility of the particular library for aid.

We note that the words of the second standard of Section 181.060, supra, are not that the tax income of the previous year shall consist only of the proceeds of taxes assessed and collected that year, or that delinquent taxes are not included in the term "tax income" in arriving at the amount of tax yield for the previous year. No such descriptive language or limitations have been used in the section with reference to the term, and since the lawmakers have not seen fit to do so, it is believed to be the legislative intent that the term "tax income" was to include all taxes, whether current or delinquent, collected during the previous year, and regardless of when the total collections were turned over to the county treasurer, so long as such tax income yields one dollar or more per capita.

For example, if the taxes for 1955, together with delinquent taxes (that is, taxes due and payable in 1954 or prior years), are collected but the collector did not turn over his December collections to the treasurer until in January, 1956, and if the total collections for 1955 yielded one dollar or more per capita, a public library of a county or city in which the collections were made would be eligible for grants of state aid.

The second inquiry asks if the tax rate voted is one or more mills and the rate collected is less than one mill but produces an amount equal to, or not exceeding, one dollar per capita, under the provisions of Section 181.060, Cum. Supp. 1955, is a public library entitled to state aid.

The second standard of Section 181.060, supra, does not provide what the tax rate shall be or that the tax rate authorized by a majority of the voters of a county or city library district, under the provisions of Sections 182.010 to 182.460, RSMo 1949, shall be collected in order for a public library of such district to be eligible for state aid, consequently it appears that such was not the legislative intent. Rather, it is believed to be the legislative intent, as shown by the express provisions of said second standard, that the basis for

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determining the eligibility of a public library for state aid is on the tax yield and not on the tax rate, and that if the tax income for the previous year is one dollar or more per capita, the public library is eligible for state aid, regardless of what tax rate is collected.

Therefore, in answer to the second inquiry, it is our thought that if the tax rate voted for a public library is one or more mills, and the rate collected is less than one mill, but produces a tax income for the previous year of one dollar or more per capita, in accordance with the provisions of the second standard specified in Section 181.060, supra, said library is eligible for grants of state aid.

CONCLUSION

It is therefore the opinion of this department:

(1) That delinquent taxes collected for a public library during any fiscal year are to be counted in determining if the tax income for such year yields one dollar or more per capita according to the latest federal census, so that a library is eligible for grants of state aid in accordance with the second alternate standard of Subsection 2, Section 181.060, Cum. Supp. 1955.

(2) That if the tax rate voted for a public library is one or more mills, and the rate collected is less than one mill, but such tax income yields one dollar or more per capita for the previous year, according to the population of the latest federal census, as provided by the second alternate standard of Subsection 2, Section 181.060, Cum. Supp. 1955, such public library is eligible for state aid grants.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

PNC:ma;bl;ml