

TAXATION:
COUNTY COURTS:

The county court is empowered by the provisions of Section 137.270, RSMo 1949, to remove tax exempt property from the back tax book upon proper application and at anytime before the taxes are paid. A like power to correct the back tax book is vested in the county court by virtue of the provisions of Section 140.040, RSMo 1949.

April 29, 1959



Honorable Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. Robertson:

Reference is made to your request for an official opinion, which request reads as follows:

"In 1955 the State Tax Commission agreed with the trustees of the Fitzgibbons Hospital here in Marshall that the hospital property would not be subject to state and county taxes. Prior to that the hospital has been paying taxes and at the time of the agreement their 1954 state and county taxes were assessed and the assessed taxes were transferred to the County Collector's Office of Saline County for collection.

"The question now arises, since the five year period is rapidly approaching for the sale of real estate for delinquent taxes, as to what disposition is to be made of the 1954 taxes. We will appreciate greatly if you will inform us if the Saline County Court can abate these 1954 taxes that were assessed to the Fitzgibbons Hospital prior to the decision of the Tax Commission that the Fitzgibbons Hospital did not have to pay state and county taxes."

First, for the purpose of this opinion, we will assume that the taxes to which you refer have been extended in the back tax book.

Your inquiry involves the authority of the county court to "abate" real estate taxes appearing on the back tax book. More

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specifically, the question would appear to be whether the county court has the authority to relieve the proper officials from the collection of back taxes where the property upon which the taxes were imposed for the year in question was tax exempt property.

We first invite your attention to the provisions of Section 137.270, RSMo 1949, which provides as follows:

"The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors or defects or mistakes. Where any lot of land or any portion thereof, has been erroneously assessed twice for the same year, the county court shall have the power and it is hereby made its duty, to release the owner or claimant thereof upon the payment of the proper taxes. Valuations placed on property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section."

Said section permits the county court to hear and determine, upon application, properly supported by affidavit, allegations of "erroneous assessments" at any term of court before the taxes are paid. This section specifically provides that valuations placed on property by the assessor or the board of equalization shall not be deemed to be "erroneous assessments." This office, in an opinion to Hilary A. Bush, under date of August 12, 1946, a copy of which is enclosed herewith, held that in view of the latter noted provision, a mere error of judgment in the valuation of property by the assessor or county board of equalization could not be considered an "erroneous assessment" under Section 137.-270, RSMo 1949.

What, then, did the Legislature intend by the use of the term "erroneous assessment"?

In the case of Clay County v. Brown Lumber Co., 90 Ark. 413, 119 S.W. 251, the Supreme Court of Arkansas defined the term "erroneous assessment" as follows:

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"* * * the term 'erroneous assessment,' as there used, refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officers in fixing the amount of the valuation of the property. If the property paid on was exempt from taxation, or if the property was not located in the county, or if the tax was invalid, or if there was any clear excess of power granted, so as to make the assessment beyond the jurisdiction of the assessing officer or board, then the provisions of Kirby's Dig. § 7180 [Crawford & Moses' Digest, section 10180] give the owner a remedy for a refunding of such taxes thus erroneously paid; but a remedy is not given by this section to the party aggrieved by reason only of an excessive assessment or overvaluation of his property. * **"

See also Cooley, Taxation, 3rd Ed., Vol. 3, Sec. 1259, p. 1205, and the cases of Ritchie Grocer Co. v. City of Texarkana, 182 Ark. 137, 30 S.W.2d 213; Flournoy v. First National Bank of Shreveport, 197 La. 1067, 3 S.2d 244; In re Blatt, 41 N. Mex. 269, 67 P.2d 293; and Home Owners Loan Corp. v. Polk County, 231 Ia. 661, 1 N.W. 742, all adopting a similar definition.

It is our opinion that the foregoing definition is correct and proper and is in complete accord with the context of Section 137.270, RSMo 1949.

We are, therefore, of the opinion that if the property to which you refer was tax exempt property, the assessment thereof for the year in question constitutes a deviation from the law, was jurisdictional in nature and rendered the assessment invalid. Thus, the same could be corrected by the county court as an "erroneous assessment" under Section 137.270, RSMo 1949, upon proper application at anytime before the taxes are paid.

We further invite your attention to the provisions of Section 140.040 and 140.140, RSMo 1949. Section 140.040 provides as follows:

"At the term of the county court at which the several delinquent lists are required by law to be returned and certified, the said court shall examine and compare the list of lands and town lots on which the

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taxes remain due and unpaid; and if any such lands or town lots have been assessed more than once, or if any of said lands, or town lots are not subject to taxation, or if the legal subdivision be incorrectly described, in all such cases the said court shall correct such error by the best means in their power, and cause the list so corrected to be certified and filed in the office of the clerk of the county court; and shall also cause the amount of the state, county and municipal taxes to be entered on record, and the amount of the state taxes to be certified to the director of revenue, and amount of municipal taxes to be certified in St. Louis city to the mayor of the city of St. Louis, to the credit of said collector."

Section 140.140 reads:

"The collector shall make diligent endeavor to collect all taxes upon said back tax book, and whenever he finds that any taxes therein have been paid, he shall report that fact to the county court, or other proper officer, giving the name of the officer or person to whom such taxes were paid; and he shall also report to the court, or other proper officer, all cases of double assessment or other errors, and thereupon the court, or other proper officer, shall cause the necessary action to be taken and entries to be made."

The latter section authorizes the county court or other proper official to take the necessary action and to make necessary entries in cases involving "errors" in assessments contained in the back tax book which are reported by the collector. While Section 140.140 does not specify what shall be deemed "other errors," we believe that reference to Section 140.040, supra, indicates that lands not subject to taxation would certainly be an error for it is therein provided that the county court shall correct "errors" appearing on the delinquent list such as "lands, or town lots not subject to taxation." We believe that it is clear that the county court could have removed the property to which you refer (assuming the same to have been tax exempt property) from the delinquent land list in the year the list was returned and examined by the county court. After this list has been filed and the back tax book made up, then the error would have to be and could be,

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we believe, corrected by the county court under the authority of Section 140.140, following the provisions for correction outlined in said section and Section 140.040.

We wish to make it clear that we are not undertaking in this opinion to say that the property to which you refer was in truth and in fact tax exempt property for the year in question. The mere fact that the State Tax Commission upon appeal found the property to be tax exempt in one year would not be conclusive upon the question as to whether the property was tax exempt in a preceding year. In other words, property such as a hospital could be, because of its operation, tax exempt one year and, because of a difference in actual operation, not be considered tax exempt for another year. We are enclosing herewith a copy of an opinion to G. M. Hulen, Jr. Prosecuting Attorney of Randolph County, under date of February 12, 1959, which opinion emphasizes the proposition that the actual operation enters into any determination as to whether or not a hospital is a charitable institution and therefore entitled to tax exemption.

CONCLUSION

Therefore, it is the opinion of this office that the county court is empowered by the provisions of Section 137.270, RSMo 1949, to remove tax exempt property from the back tax book upon proper application and at anytime before the taxes are paid.

We are further of the opinion that a like power to correct the back tax book is vested in the county court by virtue of the provisions of Section 140.040, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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Enclosures