

**FIRST CLASS CITIES:** State property is not subject to special assessment  
**SPECIAL ASSESSMENTS:** taxation by the terms of Section 88.333, RSMo 1949,  
**TAXATION:** subjecting other normally tax exempt entities to  
**STATE IMMUNITY FROM** special assessment taxation in first class cities.  
**SPECIAL ASSESSMENT** To subject the state to special assessment taxation  
**TAXATION:** the Legislature, by statute, must name the state or  
there must be clear implication by the statutory word-  
ing that the state, as a body, is subject to special  
assessment taxation.

September 10, 1959



**Colonel Hugh H. Waggoner**  
**Superintendent**  
**Missouri State Highway Patrol**  
**Jefferson City, Missouri**

**Dear Colonel Waggoner:**

This is in reply to your letter of August 3, 1959, requesting information as to whether the State Highway Patrol station in St. Joseph could legally pay its proportionate part of a special assessment for curbs, gutters and pavements. Your inquiry reads as follows:

"A question has recently been raised reference paving of a city street along the north-east side of our property at St. Joseph. After conferring with Mr. John W. Schwada, Director of Budget and Comptroller, it was his opinion that your office should rule on this matter before committing our department for payment.

"The information is as follows: Our station at St. Joseph is within the city limits. Our property adjoins the city street for some one hundred-fifty or more feet along the north-easterly side. There is a new area that has recently been developed east of our station and to which this street connects. There is approximately fifty property owners on this street and they have through voluntary petition asked the City of St. Joseph to install curbs, gutters and pavement. As soon as fifty-one percent of the property owners sign they will then present the petition to the City Council for an ordinance to be passed to do this work. We have been asked to pay \$560 for the improvement on our frontage. The improvement will probably not benefit our property greatly, however to avoid ill feeling with the

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people in this area, we are willing to pay our proportionate share if it can legally be done.

"We see this question arising again from time to time on our other properties as the various cities expand their boundaries to include our property.

"Our question is: Can we legally pay the City of St. Joseph \$560 from state funds for this improvement?"

The question of a state agency being obliged to pay for local special assessments for street paving has been presented to this office on a prior occasion, and answered by our opinion of August 24, 1950, to Mr. R. L. Groves of the Adjutant General's Office. We are enclosing a copy of that opinion for your information.

In view of the fact that the enclosed opinion points to a recognized distinction in governmental tax immunity between local assessments and general public purposes, coupled with the fact that a different section of the same chapter of our statutes, i. e., immunity or the lack thereof in connection with tax bills for public improvements in first class cities, as found in Section 88.333, RSMo 1949, an extensive analysis was made to determine whether the state had subjected itself to special assessment taxation in this instance. After careful study, we have determined that the same rule expressed in the enclosed opinion is applicable in this instance, and the state is not liable for special assessments on this property. In so holding, we understand and sympathize with your view that the state agencies should endeavor to keep their public relations as good as possible in local areas, however, we feel that if the state is to make payment of its share in such instances the Legislature must take affirmative action to subject the state to special assessment taxation.

Section 88.333, RSMo, in part, reads as follows:

"In all cities of the first class in this state wherein any public improvement is made for which special tax bills are issued against private property for the payment thereof, such tax bills shall also be issued against all

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county or other public property, church property and all cemeteries, railroad rights of way and property under the control of or owned by public school districts, in the same manner and to the same effect as such tax bills are issued against other private property chargeable for such public improvements; \* \* \*

(Emphasis ours.)

The phrase "other public property", underscored by the writer in the above quoted statute, would seem on first blush to include state property, however, it is our view that where the state itself is concerned the Legislature must make its intent to subject state agencies to taxation implicit on its face, i. e., by affirmatively stating that the state or its agencies are subject to their proportionate share of special assessments.

In construing statutes of this nature, the rule of *inclusio unius est exclusio alterius* is applicable. The rule is defined in *State ex rel. Whall v. Saenger Theatres Corporation et al.*, 190 Miss. 391, 200 So. 442, 1.c. 446, as follows:

"[6] In construing this clause we are confronted with the fundamental rule of construction that where a statute enumerates and specifies the subjects or things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned, or under a general clause, those not of like kind or classification as those enumerated. *Inclusio unius est exclusio alterius.* \* \* \*

Our court has applied this rule in case of statutory powers in *Brown v. Morris*, 365 Mo. 946, 290 S. W. (2d) 160, as follows [290 S.W.(2d) 1.c. 166]:

" \* \* \* The rule that the express mention of one thing implies the exclusion of another would also weigh against the inclusion of the additional restriction since, where special powers are expressly conferred or special methods are expressly prescribed for the exercise of power, other powers and procedures are excluded. *Kroger Grocery & Baking Co. v. City*

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of St. Louis, 341 Mo. 62, 73, 106 S.W. 2d 435,  
439 [7], 111 A.L.R. 589."

Another rule of statutory construction applicable in this instance is the rule of *ejusdem generis*, or the limitation of the general to the specific when both general and specific words are used in a statute, i. e., the general class is limited to the same types or classes set forth in the specifically enumerated categories.

In *Hammett v. Kansas City*, 351 Mo. 192, 173 S.W.(2d) 70, our court expressed the rule as follows [173 S.W.(2d) 1.c. 75]:

" \* \* \* 'The *ejusdem generis* rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified.' "

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Applying these rules to Section 88.333, RSMo, we note that the state is not specifically listed, while other governmental bodies normally thought of as tax exempt entities are listed, i. e., counties, school districts. Likewise, the term "public property," the general category listed, would seem to include normally tax exempt entities of the type specifically listed as subject to special assessment by applying the *ejusdem generis* rule.

Realizing that these are rules of construction and not rules of law, nevertheless, where the state is to be subjected to taxation the presumption is that it is not subject to taxation.

X See *State ex rel. Cairo Bridge Commission v. Mitchell et al.*, 352 Mo. 1136, 181 S.W.(2d) 496, certiorari denied 322 U.S. 772, 65 S. Ct. 131, 89 L. Ed. 617. Again, we quote, 181 S.W.(2d) 1.c. 499:

" \* \* \* The general doctrine is that tax exemption statutes should be strictly construed because taxes are imposed on the whole citizenry for the support of the government, and exemptions are discriminatory. 61 C.J. § 396, p. 392. 'Taxation is

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the rule, exemption is the exception.' Young Women's Christian Ass'n v. Baumann, 344 Mo. 898, 902(1), 130 S.W. 2d 499, 501(1). But as to property owned by the State or any of its political subdivisions, the doctrine is reversed. There taxation is the exception and not the rule. This State in its Constitution expressly exempts its own property as well as that of counties and 'other municipal corporations'; and also certain land or property used for other specified public purposes, Sec. 6, Art. X, Mo. R.S.A. There is no presumption that the State intends to tax itself. \* \* \* "

Conat.

Clear pronouncement by the Legislature would be necessary in this field to subject the state or even enable the state to pay special assessments. This is the view expressed by our courts in City of Clinton v. Henry County, 115 Mo. 557, 22 S.W. 494, i.e. 496, 497:

" \* \* \* The statute giving to cities power to levy local assessments for street improvements uses the most general language. Such language is not sufficient to embrace the property of the state or property of the county which has been devoted to strictly public uses, - which in fact constitutes one of the instrumentalities provided for carrying on the state government.

\* \* \* \* \*

"It is true the cases last cited were all suits against private property owners; and as it is within the power of the legislature to make property devoted to public uses liable for local assessments, and as it is contrary to public policy to permit public property to be sold, we may and do concede that the legislature can provide for the payment of local assessments against public property out of the general treasury. Such a provision would doubtless be sufficient to show an intent to make such property liable for these assessments. But the legislature has made no such provision. The argument, therefore,

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that the courts can devise a remedy where there is a right does not meet the issue in this case; for the real question is whether the city had the power or right to levy the assessments upon public property, and we are unable to find any evidence of such a legislative intent.

\* \* \* \* \*

"The property here in question is strictly public property, and, on well-settled principles of law, cannot be held liable for these local improvement assessments until the legislature so says, in clear terms, or by necessary implication, and that it has not done by the statute relating to cities of the third class. There is much merit in the argument that the public - the beneficial owner of the courthouse property - ought, as a matter of fairness, to bear a part of the cost of improving the streets, but the argument addresses itself to the legislature. Courts must declare the law as they find it."

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CONCLUSION

It is the opinion of this office that the state has not subjected itself to special assessment taxation in first class cities by the terms of Section 68.333, RSMo 1949, which has subjected the normally tax exempt entities to special assessment taxation. To subject the state to special assessment taxation, the Legislature must, by statute, affirmatively say the state is subject to special assessment taxation, or the implication, by statutory wording, must be clear and unmistakable that the state has subjected itself to special assessment taxation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, J. B. Buxton.

Very truly yours,

John M. Dalton  
Attorney General

Enclosure  
JBB:lc/em