

TAXATION:
CONSOLIDATION OF MUNICIPALITIES:
CITIES, TOWNS AND VILLAGES:
REFUND OF TAXES:

After consolidation of two municipalities, the governing body has no authority to make any distinction with respect to liability for taxes thereafter levied, between residents of the two former municipalities and may not

legally forgive the payment or refund taxes so levied to the residents of one of such former municipalities.

March 22, 1963

OPINION NO. 90



Honorable E. J. Cantrell
Representative, Sixth District
St. Louis County
Capitol Building
Jefferson City, Missouri

Dear Mr. Cantrell:

We have your request for an opinion concerning the power of the City of Overland to refund certain taxes to the former inhabitants of the Village of Meadowbrook Downs. The facts, as they are stated in the papers forwarded to us are as follows:

Acting under the authority of Chapter 72, RSMo Cum. Supp., the City of Overland and the Village of Meadowbrook Downs, on April 3, 1962, by an affirmative majority vote of each municipality, consolidated under one government, the name of the municipality as consolidated being City of Overland. As a result of the consolidation, all of the records, moneys and properties of the former Village of Meadowbrook Downs were turned over to the consolidated City of Overland. Thereafter on June 28, 1962, the consolidated City of Overland enacted a budget ordinance and a tax ordinance for the ensuing fiscal year which began July 1, 1962.

The question raised by your request is whether the consolidated City of Overland may validly refund to the residents of the former Village of Meadowbrook Downs taxes levied and collected by the consolidated City of Overland pursuant to the authority of the ordinance of June 28, 1962, on the theory that the "assets" of such former municipality were in excess of the amount of such taxes. In our opinion this question must be answered in the negative.

Honorable E. J. Cantrell

Although it is true that the "assets" of the former Village of Meadowbrook Downs were transferred by operation of law to the City of Overland, the city which became the owner thereof was not the former City of Overland, but the new city resulting from the consolidation. Thus, it is equally true that the "assets" of the City of Overland were transferred by operation of law to the new consolidated City of Overland. In 62 C.J.S., Municipal Corporations, Section 77, page 186, it is said:

"On the consolidation of two or more municipalities, their property passes to the consolidated municipality."

And in 62 C.J.S., § 70, pages 181-182, it is said:

"Ordinarily, where two or more municipal corporations are combined, the resulting corporation includes the persons and places of the several municipalities, has the same property, as discussed infra § 77, and owes the same debts, as considered infra § 78, which they all had and owed, and the identity of the component elements is lost and becomes absorbed in the new creation."

In State ex rel. Consolidated School District v. Smith, 121 SW2d 160, 1.c. 163, our Supreme Court held with reference to a consolidated school district:

"Upon consolidation the identities of the component districts fade and disappear completely and in their stead emerges a new entity in the form of the consolidated district. This new entity spontaneously becomes the owner of the properties and liable for the old debts."

Thus it is clear that after a consolidation of two municipalities has been consummated all of the taxpayers of such new consolidated municipality are entitled to the benefits resulting from the consolidation and therefore must bear the burdens. If either of the former entities had a large indebtedness, the burden of discharging this indebtedness would fall upon all taxpayers without regard to which entity created the debt. So, too, the assets of each of the former municipalities enure:

Honorable E. J. Cantrell

to the benefit of all of the residents and taxpayers of the new consolidated municipality. From and after the effective date of the consolidation, all residents of the new consolidated municipality stand on equal footing. Whether the benefits to be derived from the consolidation are sufficient to compensate for the burdens is a matter which was determined by the voters at the time of the election authorizing the consolidation. Having affirmatively voted to consolidate, the residents of neither of the former municipalities may now seek to avoid or be entitled to avoid any of the legal consequences of such consolidation.

In City of Westport v. McGee, 128 Mo. 152, 30 S.W. 523, the Court held that a statute exempting certain lands within the city limits violated the provision of Section 3, Article 10, of the Constitution of 1875 (identical in this respect to Section 3, Article X of the 1945 Constitution) that taxes "shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," stating:

"The authority which levied this tax was the city of Westport. This real estate is in the same class with all other real estate in said city, and its owner is as much bound to bear his proportional part of the burden of supporting the government as any proprietor of real estate in said city."

Section 4(a) of the present Constitution authorizes the General Assembly to further classify personal (but not real) property, with the significant limitation that such classification may not be based on the "nature, residence or business of the owner", but must be based solely on the nature and characteristics of the property.

Section 6, Article X of the present Constitution lists property which is and may be exempt from taxation, and states: "All laws exempting from taxation property other than the property enumerated in this article, shall be void." In Life Association of America v. Board of Assessors of St. Louis County, 49 Mo. 512, it was held that similar provisions of a former Constitution could not be evaded by indirection (in that case, by commutation).

Honorable E. J. Cantrell

In Long v. City of Independence, 229 SW2d 686, our Supreme Court expressly ruled that all property within the corporate limits when a tax is levied is subject to city taxes. That case, as the earlier case of City of Westport v. McGee, involved property annexed to the city after January 1, but before the tax was levied. Said the Court (229 SW2d, 1.c. 690):

"We restate the issue here as it was stated in the City of Westport case:
'The question here is, were these lands within the corporate limits when the tax was levied? If they were, they are subject to city taxation.' Appellants' personal property likewise was taxable by the city if they were residents of the city when the tax was levied."

What is said in the foregoing cases applies with respect to annexed territory, but is equally applicable to a situation such as here present, namely, where the tax is levied by a new consolidated municipality after the effective date of the consolidation.

We also take note of Section 94.240, RSMo 1959, which expressly provides:

"The mayor and board of aldermen shall have no power to release any person from the payment of any tax, or exempt any person from any burden imposed by law."

CONCLUSION

It is the opinion of this office that the City of Overland may not validly refund to the residents of the former Village of Meadowbrook Downs taxes which were levied by the consolidated City of Overland subsequent to the consolidation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Very truly yours,

THOMAS F. EAGLETON
Attorney General