TAXATION: Municipal housing authority subject to
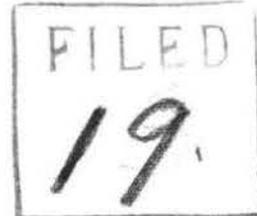MUNICIPAL HOUSING AUTHORITY: Chapter 99, RSMo 1959, not liable for
                                        ad valorem taxes assessed and levied,
                                        but not collected, on property it con-
                                        demns, and such property may not be sold
                                        for such taxes.

                    January 23, 1964

                                            Opinion No. 391 (63)
                                            FF 19 (1964)

                                            FILED

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Honorable Lon J. Levvis
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Mr. Levvis:

        This opinion is rendered in answer to your inquiry reading
as follows:

        "Some time prior to October 19, 1962, the
        Housing Authority of the City of Mexico, Missouri,
        instituted condemnation proceedings against a
        certain piece of residence property in the City
        of Mexico and owned by one Garlene Brooks, said
        real estate to be used in a housing project that
        then had been proposed. Commissioners were ap-
        pointed and on October 19, 1962, they returned
        into Court an award of $3,750.00. Said owner,
        in due time, excepted to said award. On June 12,
        1963, after several juries had awarded damages in
        lesser amounts than the commissioners had awarded
        in the respective cases, Garlene Brooks filed in
        his case a withdrawal of his exceptions to the
        commissioners' award.

        "Both at the time of the award to Brooks by
        the commissioners and at the time of his with-
        drawal of exceptions to that award the state and
        county taxes on said property for the years 1959,
        1960, and 1961 were unpaid, and at the time of
        Brooks's withdrawal of exceptions the state and
        county taxes for 1962, also, were delinquent, and
        taxes for 1963 were a lien on said property. The
        State of Missouri, the County of Audrain, and the
        Audrain County Collector were not made parties to
        the condemnation proceedings. No notice of said
        condemnation proceedings was given to the State.

the County, or the Collector. The amount awarded
by the commissioners ($3,750.00) was paid into
Court and disbursed by the Clerk without any pro-
vision being made for the payment of said taxes
and without any notice to the State, County, or
Collector. The Collector has demanded payment
of said taxes by said Housing Authority. The
Authority has refused to pay said taxes and takes
the position that it is not liable for them.

"I wish that you would please let me have
your opinion on the following question based on
the foregoing facts: Has the acquirement of said
property by said Housing Authority through the
condemnation proceedings wiped out the state's
and county's lien for said taxes so that said
property cannot be sold by the collector and so
that said Housing Authority has no responsibilty
for the payment of said taxes?

"The Housing Authority law is embodied in
Chapter 99 of the Missouri Statutes. See, parti-
cularly, sections 99.080 and 99.200."

The legal character of a municipal housing authority formed
under Chapter 99, RSMo 1959, is clearly described in the following
language from Section 99.080, RSMo 1959:

"An authority shall constitute a municipal corporation,
exercising public and essential governmental functions,
* * *".

In Laret Investment Company v. Dickmann, 345 Mo. 449, l.c.
454, 455, 134 SW2d 65, we find the Supreme Court of Missouri
alluding to the legal character of a municipal housing authority
in the following language.

"The broad definition of a municipal corporation
requires that it be formed for the purpose of
performing some governmental function. The
General Assembly, in the Act under consideration,
declared the Housing Authority to be a municipal
corporation, defined its purposes, declared them
to be governmental functions, and declared the
existence of an urgent necessity for its services.
* * * We must presume that the declared purposes
are 'public purposes' and governmental functions
unless it clearly appears that they are not in
harmony with the provisions of the Constitution."

In Schmoll v. Housing Authority of St. Louis County, 321 SW2d 494, l.c. 496, the following language sustains the proposition that a municipal housing authority is exempt from ad valorem taxes:

"It has been expressly held on two occasions, and all the reasons were fully considered, that housing authority property is exempt from ad valorem taxes. Laret Investment Co. v. Dickmann, supra; Bader Realty & Inv. Co. v. St. Louis Housing Authority, supra. [358 Mo. 747, 217 SW2d 489]"

The facts disclosed in your inquiry establish that prior to the time the municipal housing authority acquired title to the property in question by condemnation proceedings, taxes had been levied and assessed against the tract while under private owner-ship and that such taxes remained delinquent and unpaid by the private owner. To such state of facts we direct the following holding from State ex rel. City of St. Louis v. Baumann, 348 Mo. 164, l.c. 168, 153 SW2d 31, 34:

"Even though taxes have been levied and assessed against a tract of land while under private owner-ship, if it be afterwards acquired by a governmental agency such taxes may not be collected".

The doctrine announced in City of St. Louis v. Baumann, supra, has been affirmed in the recent decision handed down by the Supreme Court of Missouri, en banc, on January 13, 1964 (not yet officially reported) in State of Missouri ex rel. County Collector of Greene County, et. al., v. City of Springfield, Missouri, et. al., No. 49,424.

Enclosed find an opinion of this office dated September 5, 1947, addressed to Honorable Roy A. Jones, Prosecuting Attorney of Johnson County, Missouri, which directs attention to Section 139.120, RSMo 1959 (Sec. 11086 RSMo 1939), outlining the proce-dure for distraint of personal property of one liable for taxes on real estate.

CONCLUSION

It is the opinion of this office that a municipal housing authority subject to Chapter 99, RSMo 1959, is not liable for ad valorem taxes assessed and levied, but unpaid, on property it condemns for its purposes, and the property so condemned may not be sold for such taxes.

Mr. Lon J. Levvis   -4-

    The foregoing opinion, which I hereby approve was prepared by my assistant, Julian L. O'Malley.

                          Yours very truly,

ENCL.

                          THOMAS F. EAGLETON
                          Attorney General

JLO/dg