

JUNIOR COLLEGE DISTRICT:
TAXATION:
STATE TAX COMMISSION:
PUBLIC UTILITIES:
RAILROADS:
SCHOOLS:

The property of public utilities enumerated in Chapters 151, 153, and 155, RSMo, is subject to 1964 taxation by the Junior College District of Metropolitan Kansas City to the same extent as other property in the district. The State Tax Commission has the duty of apportioning the valuation

of such utilities to the junior college district for 1964 taxation and is authorized to obtain the necessary information for such purpose.

Opinion No. 361

November 16, 1964



State Tax Commission of Missouri
Jefferson Building
Jefferson City, Missouri

Gentlemen:

You have requested our opinion as follows:

"This Commission requests an official opinion from your department as to whether or not, in view of the facts set forth below, public utilities enumerated in Chapters 151, 153, 155, R.S.Mo., 1959, should be required to amend or supplement their annual advalorem property statement made to this agency for the year 1964, so as to include the Junior College District of metropolitan Kansas City.

"The Junior College District of metropolitan Kansas City, Missouri, was created under order of the State Board of Education on June 5, 1964. This organization was in accordance with the provisions of Sections 165.790 to 165.840, inclusive of the Missouri Revised Statutes.

"The election for the creation of the District was held on May 26, 1964, and the various election authorities certified the votes on or before June 2, 1964.

"On June 23, 1964 the Board of Trustees of said Junior College District set the tax

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levy at ten cents on the hundred dollars valuation, and on the same date this rate was sent to the county clerks of Jackson, Clay, Platte and Cass Counties, Missouri."

Your letter assumes, and in our opinion correctly so, that the Junior College District of Metropolitan Kansas City is legally authorized to impose a tax on property in the district for the year 1964, the year in which it was organized, although such district was not established until June 5, 1964.

Section 165.800, RSMo Cum. Supp. 1963, provides for submission to the voters in the district area of a proposition to organize a junior college district with power to impose a property tax. The election is to be held at the annual school election except that where such elections of component school districts in the area are not to be held on the same date, the State Board of Education shall set the date for the election. The results of the election must be transmitted within fifteen days thereafter to the State Board of Education and if the proposition has received a majority of the total number of votes cast, then the State Board of Education enters an order declaring the district organized.

Section 165.817, RSMo Cum. Supp. 1963, requires a junior college district organized under the act to provide college courses of instruction for pupils resident within the district who have completed an approved high school course; and Section 165.820, RSMo Cum. Supp. 1963, provides for the appointment of employees by the directors of the district. The districts thereafter have and exercise all powers which any junior college district could exercise had it been in existence prior to the date of organization. It is obvious that if the district could not levy the prescribed tax for the current year it would be rendered completely impotent and unable to perform its duties and functions until the next succeeding year. Nothing in the language of the law justifies any such interpretation.

This office has heretofore issued an opinion dated October 16, 1957, to Honorable Roy C. Miller, which holds that when a county health center has been established a tax therefor authorized by the voters of the county before October 31 of a given year, then such tax can be levied and collected for such year. We believe the same principle to be applicable here.

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We note from the original record in the case of State ex rel. Benson v. Union Electric Company of Missouri, (Mo. Sup.) 220 SW2d 1; that the St. Louis County Library District levied a tax for the year of its organization in similar circumstances and its right to do so was not in any wise questioned in that case. And in Long v. City of Independence, (Mo. Sup.) 229 SW2d 686, our Supreme Court held that a city had authority to levy and collect a tax on certain property therein notwithstanding that such property did not come within the city limits until after January 1 of the year for which the taxes were levied by virtue of annexation. The basic holding in that case was that all property was subject to tax by the city if it was within the corporate limits when the tax was levied. So, too, with respect to a junior college district, if the levy is made within the time authorized by law, as here, it is of no consequence that the district was not organized until June of the year in question. Parenthetically, we note that in St. Louis & S. F. Ry. Co. v. Gracy, 126 Mo. 472, 29 SW 579, the Supreme Court held that the fact an order for the levy of taxes was not made until after the time the taxes were due and payable would not invalidate the tax, such delay being deemed to be a mere irregularity.

Your question relates specifically to certain public utilities enumerated in Chapters 151, 153, and 155, RSMo, the distributable property of which is assessed by the State Tax Commission. Section 165.827, RSMo Cum. Supp. 1963, provides as follows:

"All real and tangible personal property owned by railroads, street railways, boats, vessels, bridge companies, telegraph companies, electric light and power companies, electric transmission line companies, pipe line companies, express companies, air line companies and other companies and public utilities whose property is assessed by the state tax commission shall be taxed at the same rate of taxation which is levied on other property in such junior college district in the same manner and to the same extent that such property is subject to assessment and taxation for general county purposes, and all of the provisions of chapters 151, 153, 154, and 155, RSMo, shall likewise apply to taxation by such junior college districts

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to the same extent as if such junior college districts were specifically included in the provisions contained in said chapters 151, 153, 154, and 155, RSMo, except that the taxes levied by such junior college districts shall not be included for the purpose of determining the average school levy for the other school districts in the county in which they are situated. The taxes so levied against such property by such junior college districts shall be collected in the same manner as taxes are collected on such property from general county taxes."

This statute in terms provides that the property of the public utilities assessed by the State Tax Commission shall be taxed at the same rate of taxation which is levied on other property in the junior college district in the same manner and to the same extent that such property is subject to assessment and taxation for general county purposes. Thus, the Legislature has clearly manifested its purpose and intent that property of public utilities be taxed at the same rate and to the same extent as all other property in the junior college district. And since all other property is subject to be taxed by the junior college district for the year 1964, it follows that property of public utilities should also be so taxed.

It is, of course, true that the reporting sections, 151.020, 153.030, and 155.020, RSMo, all provide basically that the utilities mentioned therein furnish an annual statement to the State Tax Commission on or before the first day of May of each year setting forth certain required information on the basis of which the Commission may make an assessment of the property of the utility and apportion the valuation to local taxing units. However, there is nothing magical about this date. The mere fact that the junior college district was not in existence prior to the date the reports were filed would not have the effect of relieving the property of the public utilities from the burden of taxation which all other properties in the district must bear. We note that if the required report is not made by May 1, the State Tax Commission, in each instance, is authorized to increase the assessed value of the distributable property of the utility by four percent. If the report is not filed pursuant to statute, then the State Tax Commission is authorized to ascertain the property of the utility and fix its value "from the best information they can obtain". Sections 151.050, 153.050, and 155.050, RSMo.

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It is obvious that the date of May 1 is fixed primarily to enable the State Tax Commission to perform its duties of determining the valuation of the property and apportioning such value more efficiently and expeditiously, and not for the purpose of fixing a date beyond which the property therein required to be reported may not be subjected to the taxing power of various local taxing units. Of importance is the fact that the statutory duty of the State Tax Commission to apportion the value to the respective taxing units is expressed in broad and general language. Section 151.080 does not make the duty of the Commission to make the apportionment dependent upon whether the utility has filed the required report prior to May 1 of the year in question, or even whether the report has been filed at all. (See also Sections 151.030 and 155.050 imposing similar duties of apportionment upon the State Tax Commission.) And Section 165.827 expressly brings junior college districts within the provisions of Chapters 151, 153, and 155, the foregoing statutory provisions are equally applicable to the apportionment of the value of the property of each of the utilities to junior college districts. It follows that the Commission is authorized to and has the duty imposed upon it to make the statutory apportionment of the property of the various utilities to the Junior College District of Metropolitan Kansas City.

The State Tax Commission has ample authority to obtain the necessary information for the purpose of making an apportionment of the property of each utility to the Junior College District of Metropolitan Kansas City. If the utilities refuse to supplement their reports in order to furnish the information necessary for the apportionment, the State Tax Commission is authorized under Chapter 138, RSMo, to examine the books and records of the respective utilities and to examine witnesses under oath and thereby obtain whatever information is required for the purpose of performing its duties of apportioning the property of the utility to the district so that such property may be subjected to taxation for the year 1964 to the same extent as all other property in the junior college district.

CONCLUSION

The property of public utilities enumerated in Chapters 151, 153, and 155, RSMo, is subject to 1964 taxation by the Junior College District of Metropolitan Kansas City to the same extent as other property in the district even though such

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district was not established until after May 1, the date by which the utilities must make their reports to the State Tax Commission. The Commission has the duty of apportioning the valuation of such utilities to the junior college district for 1964 taxation, and is authorized to inspect books and records and examine witnesses under oath if necessary to obtain the necessary information.

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

Yours very truly,


THOMAS F. EAGLETON
Attorney General