

INCOME TAX:  
TAXATION:  
INTEREST:

There is no constitutional provision prohibiting the Legislature from paying interest on income tax refund claims which arose during the year 1964 but which remain unpaid because of an insufficient appropriation.

February 2, 1965

OPINION NO. 72

Honorable Bernard Simcoe  
Representative, Callaway County  
Room 306B  
Capitol Building  
Jefferson City, Missouri



Dear Representative Simcoe:

On January 19, 1965, Mr. F. E. Robinson wrote a letter to this office on your behalf. In his letter, and subsequent telephone conversations on this subject, Mr. Robinson said that the House Appropriation Committee was considering an appropriation bill to allow the payment of income tax refunds which should have been paid by the State of Missouri during the year 1964 but were not because of an insufficient appropriation by the 72nd General Assembly. Mr. Robinson asks whether there are any constitutional limitations or restrictions upon the Legislature, preventing them from allowing interest on these unpaid tax refunds when they are paid this year.

We have been informed that the bill authorizing such an appropriation is to be amended. The taxpayers who are to receive interest on their refunds are to be classified as those whose claim for refund of income tax arose during the calendar year 1964 but who failed to receive their refund payment because the money appropriated for this purpose was depleted. The exhaustion of funds took place on or about August 1, 1964.

We have concluded that there is no constitutional prohibition preventing the Legislature from granting interest on income tax refunds which come within the above described classification. We will first discuss those portions of the Missouri Constitution which we have considered and will then analyze certain statutory provisions applicable to this subject.

Article III, Section 38(a)

This section says that the General Assembly has no power to "grant public money" or "lend public credit" to any private person, except under certain specified situations. The type of grants prohibited by this section are "gratuitous grants", State ex rel Kelly v. Hackmann, 275 Mo. 636, 205 S.W. 161. In State ex inf McKittrick v. Southwestern Bell Telephone Company, Banc, 338 Mo. 617, 92 S.W. 2d 612, the Supreme Court of Missouri refused to upset a statute which gave Southwestern Bell the right to place their lines under, along and across public highways and to erect the necessary fixture and poles to sustain the wires. The Court said there was no gratuitous grant since the general public benefited by the extension of phone service. This benefit was in the nature of "consideration" for the legislative authorization. The same theory was used in State ex rel State Highway Commission v. Eakin, Mo. Sup., 357 S.W. 2d 129.

The prohibition of Article III, Section 38(a), was held to not apply to an appropriation for a valid public obligation, State ex rel S. S. Kresge Co. v. Howard 357 Mo. 302, 208 S.W. 2d 247. In State on inf Dalton v. Land Clearance for Redevelopment Authority of Kansas City, 364 Mo. 974, 270 S.W. 2d 44, the Authority had power to acquire property under the power of eminent domain, demolish the structures on it and subsequently sell it to a developer. Under these circumstances, the Court said there was no grant of public money or property to a private person. The whole scheme of redevelopment was held to center on a public purpose.

Based upon the cases cited above, it is our opinion that the Legislature has the power to pay interest on those income tax refund claims that are unpaid because of an insufficient appropriation. If money is immediately appropriated to pay such refunds, these taxpayers will receive their payments about six months later than when they could have reasonably expected to have been paid. The state has had the money for this six month period. Thus, we believe there is sufficient "consideration" for the payment of interest upon its refund.

Article III, Section 40(30)

This provision forbids the General Assembly from passing a special law "where a general law can be applicable, and whether a general law could have been applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject." Although the courts are the sole judges of whether a law is general or special, they have established certain standards or tests which they apply to the statutes under review in order to

reach the decision. In Reals v. Courson, 349 Mo. 1193, 164 S.W. 2d 306, 1.c. 307, the Supreme Court established the following test which is often cited by the Court:

"A statute which relates to persons or things as a class, is a general law, while a statute which relates to particular persons or things of a class is special \* \* \*. The test of a special law is the appropriateness of its provisions to the objects that it excludes. It is not, therefore, what a law includes, that makes it special, but what it excludes."

The classification must not be unreasonable or arbitrary, Davis v. Jasper County, 318 Mo. 248, 300 S.W. 493. "The basis of sound legislative classification is similarity of situation or condition with respect to the feature which renders the law appropriate and applicable." Hull v. Baumann, 345 Mo. 159, 131 S. W. 2d 721, 725.

House Bill No. 159 is the act which attempts to authorize the payment of interest on the unpaid 1963 tax refunds. In passing, it should first of all be pointed out that the title of the act would probably be more accurate if it stated that it was "relating to the payment of interest on income tax refunds". More importantly however, it is the opinion of this office that the act, as presently written, provides for an arbitrary classification of taxpayers who are to receive interest on their 1963 tax refunds and as such is a special law repugnant to the constitutional article cited above. It uses the arbitrary date of August 1, 1964, in designating those who are to receive interest and those who are not; i.e., refunds made prior to this date bear no interest while those after this date will.

If House Bill No. 159 is rewritten so that it designates, as a class, those taxpayers who had a claim for income tax refund arise during the year 1964 and who failed to receive their refund because of an insufficient appropriation by the 72nd General Assembly, then we believe that this classification will be reasonable. Those within the class will be in a "similarity of situation or condition" and will be treated equally. Those excluded from this class cannot claim to come within it because they have, in fact, received their tax refund and have not been deprived of their refunded tax for an unreasonable period of time.

Article III, Section 39 (1), (2), (4), and (5)

These subsections hold that the General Assembly has no power:

"(1) . . . to authorize the giving or lending of the credit of the state . . . to any person . . .

"(2) To pledge the credit of the state for the payment of the liabilities, . . . of any individual . . .

\* \* \* \* \*

"(4) To pay or to authorize the payment of any claim against the state . . . without express authority of law.

"(5) To release or extinguish . . . without consideration, the indebtedness, liability or obligation of any . . . individual due this state . . ."

We have considered this entire section, as well as those cases which have interpreted it, and have concluded that it is not applicable to anything contained herein. The concept of lending or pledging the credit of the state to any person, where relevant to the issues herein, has been sufficiently disposed of in our discussion of Article III, Section 38(a). We do not believe that the issues raised in your opinion request involve the problem of the Legislature authorizing the payment of a claim against the state without express authority of law (House Bill 159 is the authorization) nor the release of an obligation due the state.

Article I, Section 13

This section of the Missouri Bill of Rights provides that no retrospective law can be enacted. It is well established in Missouri that this constitutional provision applies to vested rights of individuals and not the state, State ex rel Jones v. Nolte, 350 Mo. 271, 165 S.W. 2d 632. With respect to its school boards, it was held that the state had the right to impair or waive whatever vested rights it may have had. Dye v. School District No. 32 of Pulaski County, 355 Mo. 231, 195 S.W. 2d 874.

In Graham Paper Co. v. Gehner, 332 Mo. 155, 59 S.W. 2d 49, l.c. 51, 52, the Supreme Court of Missouri, En Banc, held:

"The provision of the Constitution inhibiting laws retrospective in their operation is for the protection of the citizen and not the state. The law is stated in 12 C.J. 1087 thus: 'The

state may constitutionally pass retrospective laws impairing its own rights, and may impose new liabilities with respect to transactions already past on the state itself or on the governmental subdivisions thereof.' See New Orleans v. Clark, 95 U.S. 644, 24 L. Ed 521. This merely means that such laws are retroactive in their operation, but that the sovereign state may forego or waive its own rights and may be held to have done so by the enactment of the law called in question."

Several statutes are applicable to the issues in this opinion insofar as they exhibit previous legislative recognition for the payment of interest out of public funds. Section 144.685, RSMo. 1959, provides that protested use tax monies if returned to protesting taxpayers should bear interest at the rate of 6 percent per annum on the amount found to be illegally collected. Section 140.530, RSMo. 1959, sets out certain circumstances under which the sale or conveyance of real property for taxes is void. Under these enumerated circumstances, the money paid by the purchaser at such void sale is to be refunded, with interest, out of the county treasury.

In the recent case of I.B.M. v. State Tax Commission, Mo. Sup. 362 S.W. 2d 635, the court held that I.B.M. was entitled to 6 percent interest on their protested money but that the interest was to run only from the date of final judgment.

The court relied specifically upon Section 408.040, RSMo. 1959, which reads as follows:

"Interest shall be allowed on all money due upon any judgment or order of any court, from the day of rendering the same until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than six percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear six percent per annum until satisfaction made as aforesaid."

This section has been held to be applicable to a city, City of Lebanon v. Boggess, K. C. App., 332 S.W. 2d 305; to a housing authority, St. Louis Housing Authority v. Magafas, Mo. Sup., 324 S.W.2d 697,

to the State Highway Commission, State ex rel State Highway Commission v. Green, 305 S.W. 2d 688, and in those cases which involve the revenue laws of the state, State ex rel Pullman v. Consolidated School District No. 50, Stoddard County, 361 Mo. 114, 223 S.W. 2d 702.

CONCLUSION

If House Bill No. 159 is amended so that it creates a classification of taxpayers, who had a claim for income tax refund arise during the calendar year of 1964 but who failed to receive their refund payment because of an insufficient appropriation by the 72nd General Assembly, then we believe such classification is reasonable. We are further of the opinion that there are no constitutional limitations on the Legislature which would prevent it from allowing interest on the payment of these refunds.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Eugene G. Bushmann.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General