

1965



Mr. V. H. Simon, Chairman
Wilson's Creek Battlefield
National Park Commission
The Southern Missouri Trust Company
Springfield, Missouri

Dear Mr. Simon:

This is in response to your opinion request, dated April 5, 1965. Your request stated that certain lands acquired by the Wilson's Creek Battlefield National Park Commission for the creation of a National Park had taxes assessed against it for the years 1962, 1963 and 1964. You further state:

"It is necessary that the Commission furnish the United States a merchantable title to the lands so acquired for said Park, free of liens and encumbrances, and consequently we will appreciate being advised as to whether or not the aforesaid State and County taxes are now a lien against the lands upon which they are assessed, the title to said lands being vested at this time in the State of Missouri."

Enclosed you will find an opinion, answered by letter issued by this office September 5, 1947, to the Honorable Roy A. Jones. The enclosed opinion cites the authorities upon which this office relied in that holding. We believe that the 1947 opinion still accurately states the law on this matter.

On pages 3 and 4 of the enclosed opinion, the case of State vs. Baumann, banc, 348 Mo. 1964, 153 S. W. 2d 31, is discussed. The Baumann case is still controlling law in this area and has been cited with approval as recently as January, 1964 by the Missouri Supreme Court, en banc, in State vs. City of Springfield, Missouri, 375 S. W. 2d 84.

State vs. City of Springfield, supra, deals in part with the liability of a political subdivision for assessed taxes upon

property acquired for public purposes. Therein the Court holds that the City of Springfield was not subject to tax collection measures because the property was exempt from taxation. The Court further stated (l.c. 91):

"This principle is aptly and more fully expounded in the oft-cited case of *Gachet v. New Orleans*, 52 La. Ann. 813, 27 So. 348: 'The tax law of a state,' says Desty in his work on *Taxation* (volume 1, p.48), 'applies to persons only, and not at all to political bodies like municipal corporations, which exercise in different degrees the sovereignty of the state.' Hence it is that when property upon which state taxes are assessed is acquired by a political subdivision of the state, like the city of New Orleans, to which certain powers of sovereignty and government, have been delegated by the state, which property is acquired for purposes of public utility coming within the scope of the powers so delegated, and is immediately dedicated or applied to such purposes of public utility, the taxes so assessed in favor of the state upon the same cease to be exigible. It pertains to the public policy of the state not to exact taxation on property so held and used. Within the scope of the powers delegated to it, the city stands for the state, and property acquired by the city in the due execution of its mandate from the state stands in consimili casu with property owned by the state itself, and taxes assessed in favor of the state upon such property must be held abated."

The Wilson's Creek Battlefield National Park Commission is without question a governmental agency entitled to the immunity from taxation, as set out above. The Commission was created by Senate Bill 254, enacted in 1961. Laws, 1961, page 237. This act has not been made a part of the Revised Statutes, but may be found in the Session Laws, as cited. Further, the appropriations for the Commission were approved, as submitted, in Section 2, House Bill No. 14. Laws, 1963, page 65.

It is the opinion of this office, based upon the authority of *State vs. Baumann*, supra, and *State vs. City of Springfield*, supra, that taxes assessed against land acquired and used for public purposes are uncollectable and that this immunity bars

Mr. V. H. Simon

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delinquent taxes assessed prior to such acquisition.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

Enclosure

cc: Mr. John Vaughn, Director
Division of Budget and Comptroller

WAP:mac