

Opinion No. 140
Answered by Letter (Burch)

March 29, 1965

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Dr. H. M. Hardwicke
Acting Director
Division of Health
Jefferson City, Missouri

Dear Dr. Hardwicke:

This is in reply to your recent opinion request which reads as follows:

"Missouri law presently authorizes counties and districts to build and operate nursing homes and levy taxes for this purpose. Considerable confusion has arisen concerning the possibility of a given piece of real property being located both in a nursing home district and in a county which is building or operating a nursing home. This leads to what is commonly referred to as "double taxation". Is this double taxation permissible under existing law?

"House Bill No. 393 has been introduced to eliminate this problem and we respectfully request an opinion as to whether H.B. 393 will accomplish this purpose."

The problem posed by your first question can and does exist under present Missouri law. Sections 198.200 to 198.350 RSMo. Cum. Supp. 1963, authorizes the creation of Nursing Home Districts and specifically states that such district may include municipalities or territory not in municipalities or both or territory in one or more counties; except that Sections 198.200 to 198.350 are not effective in counties having a population of more than four hundred thousand inhabitants, Section 198.200 RSMo. Cum. Supp. 1963. This section further

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provides that such districts shall be a body corporate and a political subdivision of the state. Sec. 198.250, RSMo. Cum. Supp. 1963, provides for the levy of a tax not in excess of fifteen cents on the one hundred dollar valuation.

Sections 198.300-310 provide for borrowing money, issuance of bonds for the payment thereof, and the collection of a tax on the tangible property within the district to effectuate such repayment.

At the same time, Section 205.375 provides for the County Court of any county or the township board of any township to acquire land, construct and equip nursing homes. It also authorizes the issuance of bonds and the levy of taxes to provide funds for this purpose.

The definition of the purpose for which a nursing home can be created in 198.300 (7) and in 205.375 (1) is not identical.

Section 198.300 (7) simply states that the nursing home shall be maintained for the benefit of the inhabitants of the area comprising the district, regardless of race, creed, or color; and gives the directors of said district very broad and general powers as to management, operation and purpose. Section 205.375--1, states that a nursing home means a facility for the accomodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services and (1) which is operated in connection with a hospital or (2) in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the state.

It would thus seem that the legislature did not intend that the nursing homes created under these two separate statutes serve the same identical purpose or alleviate the same health burden.

Double taxation is not of itself impermissible but becomes so only when it is imposed in a manner violative of the state law, or the Missouri or Federal Constitution. Section 3, Article X of the Missouri Constitution states in part, "taxes . . . shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," and it is to those words and their interpretation by the Courts that our attention should be directed in determining what is meant by double taxation, and when it is permissible and when prohibited.

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In State v. Kemp, 283 S.W. 2d 502, 518, the Court adopts the following definition:

"To constitute double taxation in the prohibited sense, the second tax must be imposed upon the same property, for the same purpose by the same state or government (italics added), during the same taxing period."

In State ex rel. Chamberlain v. Young, 167 S.W. 995, the Court stated:

" . . . duplicate or double taxation, obnoxious to the constitutional provisions requiring equality and uniformity, occurs when one person or any one subject of taxation shall directly contribute twice to the same burden (italics added), while other subjects of taxation belonging to the same class are required to contribute but once."

In State v. Koeln, 211 S.W. 31, school taxes were levied upon a corporation by both the state of Missouri and a St. Louis school district. The Court held that no double taxation occurred, and adopted the above definition of double taxation in the Chamberlain v. Young case and went on to state:

"A tax levied and collected by and for a 'school district' is entirely a different burden from the tax levied and collected for state purposes" (italics added)

In State v. Rooney, 235 S.W.2d 260, a Clay County levee district had been in existence some forty years. Thereafter, the city of Kansas City annexed certain lands located within this county levee district. A landowner in the levee district, whose property was subsequently annexed by the city, sought to prohibit the county levee district from exercising its powers (among which were taxing powers) over property of the landowner annexed by the city. The Court in ruling against the landowner stated that annexation by the city of a part of the territory of the levee district did not take away any of the powers or authority of the levee district in its original area.

The case of St. Louis County Library District v. Hopkins, 375 S.W. 2d 71, is a case in which the facts are analogous to our problem of dual taxation of one piece of property by two

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taxing authorities. In this case the St. Louis County Library District was levying a tax on all taxable property within its geographical boundaries for the maintenance of a free public library. At this time, the boundaries of the County Library District did not include the cities of Florissant and Kirkwood who each had their own free public libraries. Thereafter, these two cities extended their city limits by annexation into the area of the County Library District and began taxing property therein for support of their city libraries. The County Library District then sought a declaration that it had the right to tax, simultaneously with the city, property lying within its original boundaries and now also included by annexation in the city. It was the contention of the cities that their annexed property would be exposed to taxation for both a city and a county library which would result in a constitutionally prohibited form of double taxation.

The Court found that both the County Library District and the city had the authority to levy and tax for the maintenance of their respective libraries and that these two entities were of equal and coordinate power in their respective jurisdictions. The fact that the city annexation resulted in overlapping jurisdiction over the same territory did not cut down or reduce the taxing power of the County Library District.

The Court went on to say,

"No general statute or statutes expressly or by necessary implication direct that when a city annexes territory included in the boundary limits of a county library district, the city pre-empts the territory for library purposes, or that taxes for the support of the county library district may no longer be imposed upon property in the annexed territory. . . ."

Thereafter the Court continued:

". . . taxation is the rule. Exemption therefrom is the exception."

In conclusion the Court held that there was no constitutional impediment. The two taxes were imposed by two separate taxing authorities, were applied uniformly to their respective areas, and that the principle of uniformity is not violated by levying taxes by two overlapping taxing districts on the same property for similar purposes.

In summary, it is our opinion that "overlapping taxation" could occur under the conditions posed in question one; that counties and nursing home districts are of equal and coordinate power and that their taxing power is co-extensive with their

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respective geographic boundaries; that the establishment of a county nursing home in a pre-existing nursing home district or the creation of a nursing home district within a county would not abridge the former taxing powers of either; and lastly, that the imposition of a separate tax, upon the same property, for similar purposes, by two separate taxing authorities is not constitutionally prohibited as long as it is uniformly applied and falls equally upon all taxable property subject to it.

The above case, however, is helpful in suggesting a proper solution to the undesirable consequences of such double taxation in that the last paragraph states:

"If statutory amendment is desirable in the field of overlapping taxation, . . . it is for the General Assembly, not the Courts, to make the necessary alterations."

This brings us then to the question of whether House Bill No. 393 will eliminate this problem.

It is our understanding that your inquiry is whether double taxation would be eliminated where a nursing home district is in existence at the time a township or county nursing home tax is levied. It is our view that House Bill 393 would accomplish this purpose if enacted in its present form.

We express no views as to the constitutionality of House Bill 393.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

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