

INTEREST:

TAXATION

DELINQUENT:

OMITTED PROPERTY:

PUBLIC UTILITIES:

UTILITIES:

Ad valorem taxes on utility property do not become delinquent and the Company subject to penalties provided for nonpayment of delinquent taxes authorized by Section 151.220, RSMo, until the thirty-first day of December next after the same are ascertained

and levied. Taxes on such property are ascertained and levied by the local County Court in those counties in which the property is located as provided in Section 151.440, RSMo, only after the Court has received the certification of the State Tax Commission and the local tax assessors as to the prorated assessed value placed upon the property subject to assessment.

Since the tax on the disputed portion of the distributable property of Kansas City Power & Light Co., and on a disputed addition to its local property subject to assessment in Jackson County in the year 1965, was not certified to the County Court until July, 1966, such taxes are not delinquent nor subject to penalty for nonpayment thereof until January 1, 1967.

December 9, 1966

OPINION NO. 397

Honorable Harlan Moody Murry  
Revenue Department  
Jackson County Courthouse  
Kansas City, Missouri



Dear Mr. Murry:

This is in answer to your question as to the liability of Kansas City Power & Light Company, (the Company) for penalties and interest and the collectors commission for collecting additional assessments made on certain property of the Company located in Jackson County. These additional assessments resulted from an increase in the valuation placed by the State Tax Commission on such property subject to property taxes for the year 1965.

The Company is a public utility and taxes are levied and collected on its property in the manner provided for the taxation of railroad property, Section 153.030, RSMo, which is governed by the provisions of Chapter 151, RSMo, as amended.

There are two different assessments under consideration. The first is on what is known as the distributable property of the Company located throughout the state, including Jackson County. This property initially is assessed by the State Tax

Honorable Harlan Moody Murry

Commission; Section 151.060, RSMo, and the aggregate value apportioned to each county in which the property is located.

The second class of property is the local property of the Company which is assessed by the County Assessor in each county in which such property is located. Section 151.100, RSMo. However, the State Tax Commission is authorized to review such local assessments and, as it did in this case, after a hearing thereon, add omitted property to the local assessment rolls. Section 138.380, RSMo, and Sections 138.460 and 138.470, RSMo.

Considering first the assessment of the distributable property of the Company, the Commission first placed an assessed value on such property of \$99,411,254. After a hearing, the Commission rendered its decision on July 7, 1965, placing a final assessment on the property in the amount of \$96,556,669.

On the same day, the Company filed a petition for review in the Circuit Court of Cole County together with a request for an order staying the certification to the various counties of the Commission's aggregate assessment insofar as it exceeded \$82,240,350. After a hearing and argument, the requested order was issued, and this amount only was apportioned and certified prior to January 1, 1966.

Thereafter, the Commission and the Company entered into an agreement whereby the Commission would place a final assessed value on the Company's distributable property in the amount of \$95,563,797, \$12,323,444 in excess of the amount previously certified to the various counties pursuant to the prior order of the court.

As a result of this agreement, and pursuant to stipulation, the Court entered an order, remanding the case to the Commission which read in part as follows:

"That the Commission's Decision dated April 25, 1966, which is the subject matter of the Petition for Review herein, is hereby vacated and this cause is remanded to the State Tax Commission of the State of Missouri for such further proceedings as it deems appropriate. Court costs herein to be paid by plaintiff."

On the same day after the matter was remanded, the Commission placed a final assessed value on the Company's distributable property in the amount agreed, and apportioned and certified this additional amount to the proper counties.

Honorable Harlan Moody Murry

Regarding the assessment of the local property, after a hearing held pursuant to Sections 138.460 and 138.470, RSMo, on October 28 and 29, 1965, the State Tax Commission, on November 8, 1965, rendered a decision which found that property which should have been reported and locally assessed under "Construction Work in Progress" in the amount of \$1,590,551.12 had not been placed upon the assessment rolls of Jackson County and directed the County Clerk of that County to spread this amount upon the railroad book tax roll. This order was amended slightly on November 10, 1965, but no change was made as to the decision.

This decision was also appealed to the Circuit Court of Cole County by the Company, which on November 30, 1965, filed three documents: 1) a petition for review; 2) a motion to stay; and 3) a motion to vacate the Commission's decision and order for lack of jurisdiction and for summary judgment.

The motion to stay was granted on December 16, 1965, and the Court entered an order enjoining the enforcement of the decision of the Commission and directed it to notify the County Clerk and County Collector of Jackson County of the order and to direct these officials to refrain from collecting the additional taxes until a final disposition of the proceedings. This was done by letter on December 21, 1965.

The motion to vacate and for summary judgment was argued and was overruled on February 1, 1966.

The Company then filed a supplemental motion for summary judgment on the grounds that the decision and order of the Commission was not properly reached by a quorum of the Commission based upon the evidence. After argument, this motion was sustained by the Court on June 9, 1966, and the cause was remanded to the Commission for further proceedings. This decision was appealed by the Commission to the Missouri Supreme Court.

At the same time of the agreement settling the dispute regarding the distributable property, the parties agreed to accept an additional assessment of local assessed property as "Construction Work in Progress" in the amount of \$795,270. Pursuant to this agreement, the Commission filed with the Circuit Court a notice of withdrawal of its appeal and all parties agreed that the case would then automatically be remanded to the Commission under the terms of the Order of June 9, 1966. Thereafter, on July 25, 1966, the Commission notified the County Collector and Assessor of Jackson County that the Commission fixed an additional assessment on the local property of the Company in the amount of \$795,270, and directed the officials to spread this amount upon the delinquent railroad tax book.

Honorable Harlan Moody Murry

The penalties for failure to pay taxes are provided by Section 151.220, RSMo Cum. Supp., which reads in part as follows:

"If any railroad company [utility] shall fail to pay to the county collector of the proper county any taxes levied \* \* \*, on the property of the railroad company in the county, on or before the thirty-first day of December next after the same shall have been assessed and levied, to same shall then be, after that date, known and treated as delinquent railroad taxes; and the company shall forfeit and pay, in addition to the taxes with which the company may stand charged on the tax books of the county, such penalty as is provided by law for the nonpayment of other delinquent taxes, which penalty shall be apportioned to the various funds respectively. It shall be the duty of the collector to collect and account for, as other taxes, in addition to all taxes so charged against the company, the penalty aforesaid, on all such taxes after the thirty-first day of December, until the same shall be paid."

Under the statute, taxes do not become delinquent until the thirty-first day of December next after the same shall have been assessed and levied, and penalties thereon do not commence until after that date. Thus, the answer to your question requires a determination of when, under the facts we have stated, the taxes on the local and distributable property of the Company for the year 1965 were assessed and levied.

A quite similar question was before the Missouri Supreme Court in State ex rel. Western Union Telegraph Co. v. Markway, Collector, 341 Mo. 976, 110 S.W.2d 1118. In this case, the telegraph company had in each year, prior to certification by the State Tax Commission of its assessment of the distributable property of the Company for the years 1933, 1934 and 1935, obtained a temporary injunction from the United States District Court against such certification of any amount in excess of the amount which the Company claimed the assessment should be. The Company's suit in Federal Court was ultimately dismissed and the dismissal affirmed by the Circuit Court of Appeals. In October, 1936, the Commission certified to the various counties those portions of the assessment which had been in dispute. On December 9, 1936, the Company tendered the amount of the taxes to the collector of Cole County with the assertion that they did not become delinquent until January, 1937, and that, there-

Honorable Harlan Moody Murry

fore, no penalties, interest or collector's commissions were due.

Taxes on the property of telegraph companies, as utilities, are by statute, levied and collected in the manner provided by law for taxation of railroad property. The court, acting en banc., in its opinion pointed out that taxes against railroad companies become delinquent if not paid "on or before the first day of January next after the same shall have been assessed and levied". The Court found there was no levy of the disputed portion of the taxes until after they were certified by the Commission in October, 1936, and that they could not become delinquent until January 1, 1937.. The Court also stated that the Company could not be required to pay interest on the amount in dispute.

The present statutes are substantially the same as those considered in the Western Union case. The aggregate value of the distributable property is determined by the Commission and apportioned by certification to the various political subdivisions. Section 151.080. In this case, the additional assessed value of the locally assessable property was placed on the local rolls by the Commission. Neither was done until after the thirty-first day of December, 1965.

The amount of the taxes upon the certified valuations are ascertained and levied by the county court, after receiving an apportioned certification of the value of the assessable property from the State Tax Commission. Section 151.140, RSMo. Within ten days after the county court has levied the proper taxes, the county clerk is required to extend such taxes in the "Railroad Tax Book", Section 151.170, RSMo, which is then delivered to the county collector for collection. Section 151.180, RSMo.

To paraphrase the language of the Court in the Western Union case, l.c. 1120:

Certainly, the various county courts in levying taxes on the assessments in [1965], as certified to them by the State Tax Commission, could not make any levy on those portions of the assessments which were enjoined because they did not have such disputed portions of the assessments before them. No levy upon the disputed portions of the assessments could be made until same were certified to the various counties in [July, 1966]. Section [151.140] requires the levy to be made by the county court each year, and in case any railroad taxes are omitted for any year or years the court is required to make a levy for such year or years, which taxes, when so levied, shall become due and payable, delinquent and subject

Honorable Harlan Moody Murry

to penalty as other railroad taxes now are, and shall be recoverable as hereinafter provided.

In view of the Court's holding in this case and in the case of State ex rel. Hammer v. Vogelsang, Mo. Sup., 81 S.W. 1087, that when property omitted from taxation is subsequently assessed, the taxes thereon do not become delinquent until after the expiration of the year in which such taxes were actually assessed and that such taxes are not assessed until done so by the county court after receiving a certification from the State Tax Commission, it is our opinion that the taxes on the additional valuation assessed against the property of Kansas City Power & Light Co., will not become delinquent until January 1, 1967.

Although in the Western Union case the Court was concerned only with taxes on distributable property, we believe the ruling therein would also apply to taxes upon local property added to the county assessment rolls by the State Tax Commission.

#### CONCLUSION

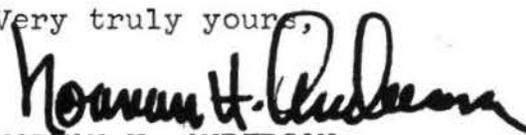
Ad valorem taxes on utility property do not become delinquent and the Company subject to penalties provided for nonpayment of delinquent taxes authorized by Section 151.220, RSMo, until the thirty-first day of December next after the same are ascertained and levied.

Taxes on such property are ascertained and levied by the local County Court in those counties in which the property is located as provided in Section 151.140, RSMo, only after the Court has received the certification of the State Tax Commission and the local tax assessors as to the prorated assessed value placed upon the property subject to assessment.

Since the tax on the disputed portion of the distributable property of Kansas City Power & Light Co., and on a disputed addition to its local property subject to assessment in Jackson County in the year 1965, was not certified to the County Court until July, 1966, such taxes are not delinquent nor subject to penalty for nonpayment thereof until January 1, 1967.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,

  
NORMAN H. ANDERSON  
Attorney General