

August 21, 1967

Opinion No. 338  
Answer by Letter-Denman

Honorable H. Dean Whipple  
Prosecuting Attorney  
Laclede County  
Lebanon, Missouri 65536



Dear Mr. Whipple:

This is in answer to your recent request for an opinion of this office as to whether a building, owned by the County Library Board, and rented to a commercial business is subject to taxation.

Enclosed herewith is a copy of our opinion number 86, issued October 19, 1961, to the Honorable Stephen E. Strom, Prosecuting Attorney of Cape Girardeau County in which we found that while real property and improvements constructed thereon which are owned by a political subdivision of the state, a municipality, and leased to a private corporation may not be assessed against the political subdivision for property taxes, the private lessee's interest therein is subject to taxation. Also enclosed is opinion number 68, issued August 14, 1961, to Clarence H. Overbay, Jr., which also relates to your question.

This opinion was based upon the decisions of the Missouri Supreme Court in *State ex rel Benson v. Personnel Housing, Inc.*, Mo.Sup. 300 S.W.2d 506, and the earlier case, *State ex rel Zieginhein v. Missouri Free School*, Mo.Sup., 62 S.W. 998. Although the question was avoided in the recent case of *St. Louis County v. State Tax Commission*, Mo.Banc 406 S.W.2d 644, the former cases have not been overruled. The question is again before Division 2 of the Court in *Iron County, Missouri v. State Tax Commission*, No. 52596 which will be argued at the September term of this year. However, the question of whether the leasehold interest of the private lessee has any value is also involved and it is possible that the Court again will avoid a direct ruling on the question whether such an interest is taxable.

However, we feel that the conclusion reached in our opinion number 86 is correct, and the interest of a private commercial busi-

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ness in a building, owned by the County Library, but leased to the business, is subject to taxation as real property under the provisions of Section 137.100, RSMo 1959, and Section 6 of Article X of the Constitution of Missouri.

Case should be taken in valuating the lessee's interest in leased property so that only such interest is assessed. One method of making such a valuation is set out in St. Louis County v. State Tax Commission, supra.

Yours very truly,

NORMAN H. ANDERSON  
Attorney General

JHD:maw

Enclosures: Opinion No. 86  
10-19-61, Strom

Opinion No. 68  
8-14-61, Overbay