

August 30, 1968

Honorable Hunter Phillips, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri 65101

Dear Mr. Phillips:

You have requested our opinion as to the reason certain real property owned by the St. Louis Mercantile Library Association in downtown St. Louis is exempt from ad valorem taxation. The specific property is Lot 42 in City Block 117, improved with a six story building. Only the upper two floors of the building house the library facilities of the Association, the remaining four stories and basement being occupied under lease by a large commercial bank.

The short answer to your question is that on March 3, 1953, the Circuit Court of the City of St. Louis entered a final judgment, the effect of which was to declare the property in question wholly exempt from taxation by the State of Missouri or any subdivision or authority thereof so long as the property is owned by the Association and it continues to occupy and use the property or any part thereof as a public library. Included in the judgment was an injunction restraining the assessor and his successors in office from thereafter assessing any taxes against the property while it is so tax exempt. This judgment, entered in Cause No. 51419-D, styled "St. Louis Mercantile Library Association, a corporation, plaintiff, vs. Joseph P. Sestric, as Assessor of the City of St. Louis, Missouri and Del L Bannister, as Collector of the Revenue of the City of St. Louis, Missouri, defendants," was not appealed and is still in full force and effect.

The Court stated in part in its "Conclusions of Law:"

"1. The parcel of land and building thereon at the southwest corner of Broadway and Locust Street,

known as Lot 42 in City Block 117 of the City of St. Louis, Missouri, and owned by plaintiff, was and is wholly exempt from taxation for State, School, City and other general taxes for the years 1950 and 1951, and such property will continue to be exempt from such taxes for subsequent years so long as said property is owned by plaintiff and so long as plaintiff continues, as heretofore, to occupy and use the said land and building or any part thereof as a public library."

The Judgment and Decree provided in part (5) as follows:

"5. That the defendant, Joseph P. Sestric, as Assessor of the City of St. Louis, Missouri, and his deputies, agents, employees and servants, and his and their successors in office, be forever enjoined and restrained from hereafter assessing any taxes against the aforesaid property of plaintiff, so long as the same shall be owned by plaintiff and occupied and used by it in whole or in part, as heretofore, as a public library;"

Implicit in your inquiry is the question whether the March 3, 1953 Judgment precludes any further attempt to tax the property in question. As to this, we can give no definitive answer, although for reasons which follow, it is our view that *res judicata* and estoppel by judgment might be held applicable in the absence of legislative action.

There are several decisions of our Supreme Court holding that "In tax cases each year's tax is a separate transaction and each action relating to each year's tax is a new cause of action." An example is *In re Breuer's Income Tax* (Division 1) 354 Mo. 578, 190 S.W.2d 248. However, most of the cases so holding involve evidentiary determinations of value (e.g., *Cupples-Hesse Corporation v. Bannister*, Mo., 322 S.W.2d 817), and even *Young Men's Christian Ass'n v. Sestric* (en banc), 362 Mo. 551, 242 S.W.2d 497, which adjudicated the tax exempt status of YMCA property, involved an evidentiary determination relating to the use made of the property. And we believe it of importance that in the YMCA case, it was the taxpayer which was relieved of the conclusive effect of a prior decision on the ground it should be treated in the same manner as other charitable institutions similarly situated.

The YMCA case conceded that ordinarily "*res judicata* and collateral estoppel, or estoppel by judgment, apply to tax cases as well as to other litigation, *State ex rel Blair v.*

Center Creek Mining Company, 260 Mo. 490, 171 S.W. 356." The Center Creek Case was decided on the basic premise that in the absence of constitutional or legislative declarations to the contrary, the state is bound by the doctrine of res judicata and estopped by judgment in tax cases. It did not involve the issue of exemption from taxation. However, the two Missouri cases cited by the Court in support of its basic premise are directly in point on this issue.

The first of these cases, Kansas City Exposition Driving Park v. Kansas City, 174 Mo. 425, 74 S.W. 979, involved, as here, the binding effect of a circuit court judgment. The Circuit Court of Jackson County had, in two cases, adjudged that the plaintiff was exempt from taxation on the property in question for certain years. Noting that in the latest action, the parties were the same, the property was the same and the facts were the same, only the tax year being different, the Court ruled as follows, l.c. 984:

"In view of the fact that the exemption of the leasehold was the question at issue in both of the former suits by injunction, and that there had been, at the time this suit was brought, no change either in the law or the facts, and the court having decreed in favor of the exemption, in our opinion the weight of authority and reason is that the judgment on that exemption became a finality, although in our opinion it was incorrectly so decided." (Emphasis Added)

The other case, North St. Louis Gymnastic Society v. Hagerman, 232 Mo. 693, 135 S.W. 42, held on the authority of the Exposition Driving Park Case, that since "(t)he identical claim of exemption, under the same charter provision" was made in the prior case, the defense of res judicata was applicable, even though the earlier case may well have been erroneously decided. As against the argument, supported by a line of cases in other jurisdictions, "that the exercise of the right to tax belongs to a sovereignty, and that estoppel does not lie against a sovereign," the Court said, S.W., l.c. 46:

"To our minds the matter was so exhaustively considered and so soundly reasoned in the Exposition Driving Park Case that no judicial excuse exists for a re-examination of its doctrine."

Thus, in the only cases directly in point, it has been squarely decided by the Missouri Supreme Court that an adjudication made by a court of competent jurisdiction (including circuit courts) that certain property is exempt from taxation, is conclusive against the taxing authorities where the basic facts are the same, no matter how erroneous may have been the

former adjudication. And in the Gymnastic Society Case, the Court expressly ruled that the successors in office of the tax collectors and assessors are equally bound, as privies.

Two more recent decisions of the Court have cast some doubt on the extent to which the doctrine of res judicata and estoppel by judgment would now be applied, in re Greuer's Income Tax Supra, and Young Men's Christian Association v. Sestric, Supra. The force of the Breuer Case is weakened by the fact that it did not clearly appear that the former judgment was based on the issue of nontaxability, there being another independent basis therefor. However, after so noting, the Court then held that since the question presented was one of law on the meaning of income in our income tax law (a question of general application), the determination in the former action was not conclusive, since injustice would result.

The Court held at l.c. 250:

"It would give one taxpayer an unfair advantage over others, and be unjustly discriminatory, if through inefficiency or neglect of the collecting officers, to appeal an erroneous decision on a question of law, it should be held that he would be relieved for all time from paying taxes all others must pay."

In the YMCA Case, the Court en banc applied the principle of the Income Tax Case in favor of the taxpayer, its theory being that injustice would result if the YMCA continued to be taxed because of an erroneous decision which had been rejected when attempted to be applied to other charitable organizations similarly situated.

The questions of law decisive of the tax exempt status of the Association's property do not involve the interpretation of a tax law of general application, as in the Breuer Tax Case, or the interpretations of the constitution and statute containing general provisions governing exemption from taxation of property used for charitable purposes, as in the YMCA Case. The particular factual situation here involved is unlikely to recur, so that even if the Circuit Court was in error in holding that the Association succeeded to the Hall Company's tax exempt status as to the property in question (and assuming that Section 4 of the 1851 Act did not affect the issue,) application of the doctrine of res judicata would not result in unjust discrimination. True, it might well result in injustice (in the abstract sense) just as the preclusive effect of any wrongly decided case results in injustice, but this is not the kind of injustice with which the Supreme Court was concerned in the Breuer and YMCA Cases.

Honorable Hunter Phillips, Chairman

For the foregoing reasons, it is our opinion that even if an assessor would be foolhardy enough to subject himself to the possibility of a contempt of court proceeding by violating the express injunction contained in the 1953 Judgment, our courts would void any assessment for taxation on the ground that the Circuit Court Judgment has conclusively established the tax exempt status of the property. The injunction would not, however, preclude a school district or other taxing authority, not a party to the 1953 Judgment, from seeking, by declaratory judgment or other proceeding, to determine whether the property is presently exempt from taxation either because of the facts or the doctrine of res judicata.

Article 1, Section 7, of the Corporation Act of 1845, reserved to the legislature the right in its discretion to alter and repeal the charter of every corporation thereafter granted. So far as we are aware, the General Assembly has never expressly attempted, at least since the adoption of the 1865, 1875 and 1945 Constitutions, to exercise the right reserved in the 1845 Corporation Law. Whether the general assembly could do so now, and whether such action would be sustained by the courts is, we believe, an open question. In *Trustees of William Jewell College of Liberty v. Beavers* (en banc 1943,) 351 Mo. 87, 171 S.W.2d 604, 610, the Supreme Court said, on Motion for Rehearings:

"Therefore, whatever may be the power of the state to repeal plaintiff's tax exemption under the reservation in the general corporation law of 1845, it did not do so by adopting the Constitution of 1865 and 1875, or by general statutes enacted for the purpose of carrying out the provisions of those Constitutions."

Very truly yours,

NORMAN H. ANDERSON
Attorney General