

TAXATION: Property held by county court for use and benefit
EXEMPTION: of county school fund is exempt from taxation; if
it is so held on the assessment date such property
remains exempt even though title thereto passes
to a non-exempt holder before the next assessment
date.

January 30, 1943

Mr. Loyd Bryan
County Clerk
Mercer County
Princeton, Missouri



Dear Sir:

This is in reply to yours of recent date, wherein you submit the following statement of facts and request for an opinion:

"Will you please mail to me your opinion on the following:

"On May 4, 1942 Mercer County School Fund Principal foreclosed on a School Loan which they had bid in. On July 1, 1942 they sold this property to Myrtle O. Boatman but there was nothing stated in the deed as to who would pay the taxes.

"A few days ago Mrs. Boatman came in asking if the Court had paid the 1942 tax and stating that she thought they should pay them as she was not owner of this property at the time it was assessed.

"The County Court however, believes Mrs. Boatman should pay the taxes. In your opinion who is responsible for the taxes?

"If the county School Fund is responsible for the tax, are they allowed to take them off with an abatement as tax-exempt property?"

The county court, under the provisions of Section 10389, R. S. Mo. 1939, may purchase lands which it sells to foreclose a school fund mortgage. In such case the lands are taken to the use of the township out of the school fund of which the mortgage or loan was made or in the name of the county court where the loan is made out of general school funds.

In speaking of the capacity in which such lands are held, the court, in *Saline County et al. v. Thorp et al.*, 88 S. W. (2d) 183, 1. c. 186, said:

"* * * It must be remembered that this is a case where public officers were acting for a governmental subdivision of the state, a county, in relation to funds held in trust for the public for school purposes. Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that every one dealing with them must take notice of those limitations. *Montgomery County v. Auchley*, 103 Mo. 492, 15 S. W. 626.

"Sections 9243-9256, R. S. 1929 (Mo. St. Ann., Secs. 9243 to 9256, pp. 7098-7104), say what a county court can do with reference to the investment, collection, and reinvestment of public school funds. These statutes require that county courts 'diligently collect, preserve and securely invest * * * on unincumbered real estate security, worth at all times at least double the sum loaned * * * the county school fund'; and that these funds 'shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools.' * * * * *"

Section 6 of Article X of the Constitution of Missouri, provides in part as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. * * * * *

Section 10937, R. S. Mo. 1939, provides in part, as follows:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; third, lands and other property belonging to this state; * * * * *

Under these sections the public school property mentioned in your request is exempt from taxes. However, the question which you submit is when must such property be held by a tax exempt body in order that it may be exempt.

Section 10940, R. S. Mo. 1939, provides:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

In the case of State ex rel. Hayes v. Snyder, 139 Mo. 549, the court held that the person who owns the property on assessment date is the one who is liable for taxes unless such property is exempt from taxation. In the case which you submit the tax exempt body held the property on June 1st,

1942, but sold it on July 1st, 1942, which was before the levy was made on this particular assessment. So, in this case we have the property in question being held by a tax exempt body on assessment date.

In Vol. 61 C. J., page 406, Section 417, the principle applicable here is stated in the following language:

"If property taxable on the assessment date is transferred within the year to a person, institution, or corporation in whose hands it is exempt, the exemption does not commence until the following assessment date; if exempt on that date and transferred within the year to a person in whose hands it is no longer exempt, the exemption does not terminate until the following assessment date. * * * *"

Applying this rule here, the property being held by a tax exempt body on June 1st, 1942, the date of the assessment, then this exemption will not terminate until the following assessment date.

From these authorities it would appear that the assessor was in error in placing the property on the tax books. Since the books are out of the possession of the assessor, then it would be beyond his jurisdiction to make the correction. Since no taxes have been levied on this property and the books are now in the control and custody of the county court, then we think the provisions of Section 10998, R. S. Mo. 1939, could be applied here. This section provides in part as follows:

"The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors or defects or mistakes; * * * * *"

By this provision the taxpayer could go before the county court and by making a proper showing have the error corrected.

CONCLUSION

From the foregoing it is the opinion of this department that properties which are held by a tax exempt body on tax assessment date will continue to be exempt until the following assessment date, regardless of the fact that the ownership of such property passes to a non tax exempt body or person.

We are further of the opinion that the county court may correct this error at this time.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

TWB:CP