

TAXATION: Lands acquired by drainage districts
DELINQUENT TAXES: are not subject to taxation and the
DRAINAGE DISTRICTS: lien for delinquent taxes may not be
enforced during the ownership of the
lands by a drainage district.

January 19, 1943

Mr. George O. Dalton
Collector of Marion County
Hannibal, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit the following question:

"After a Drainage District has acquired title to property are they liable for back taxes that have accumulated against the real estate?"

Since you do not state in your letter under which Article the district is formed we cannot definitely answer questions 2 and 3 submitted by you. However, we will refer you to the opinion written to you by this department under date of January 13th, 1940.

On the question of the liability of the district for taxes on lands which taxes accrued before the district acquired title to the lands, we refer you to Section 6, Article X of the Constitution of Missouri, which is as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable, also

such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, that such exemptions shall be only by general law."

Also, Section 7 of Article X of the Constitution of Missouri, as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

We also refer you to Section 10937, R. S. Mo. 1939, which provides in part as follows:

"The following subjects are exempt from taxation: * * * * * fourth, lands and other property belonging to any city, county or other municipal corporation in this state, including market houses, town halls and other public structures, with their furniture and equipments and all public squares and lots kept open for health, use or ornament; * * *"

Drainage districts are municipal corporations.

In State ex rel. Caldwell v. Little River Drainage District, 291 Mo. 72, 78, the court, in arriving at the foregoing statement, said:

"As a drainage district is not the State, nor a county, it must, in order for its property to be exempted from taxation under this provision, come within the designation of 'other municipal corporations.' Whether it is a municipal corporation in the sense in which those terms are therein used is the concrete question presented for determination."

Also, at l. c. 81, the court said:

"Our conclusion is that the defendant is a municipal corporation within the meaning of that term as used in the

provision of the Constitution dealing with tax-exemption, and that its property, used exclusively in the discharge of its prescribed governmental function, is exempt from taxation."

In the case of Grand River Drainage Dist. of Cass and Bates Counties v. Reid, 111 S. W. (2d) 151, 153, the court, in passing on the exemption from taxes on lands held by drainage districts, said:

"* * * Drainage districts are of statutory origin, possessing only such power as is expressly delegated or necessarily implied from those granted. So long as they proceed in conformity with the expressed or implied authority conferred, we perceive no reason why they may not successfully invoke the protection of section 6, art. 10 of our Constitution. Consult annotations in 3 A.L.R. 1439 and 101 A.L.R. 787; Robinson v. Indiana & Ark. L. & M. Co., 128 Ark. 550, 557 (4), 194 S. W. 870, 872 (4), 3 A.L.R. 1426. We, therefore, reserve for a record presenting the issue whether or not they may acquire and hold, under said sections 10766 or 11020, Mo. St. Ann., Secs. 10766, 11020, pp. 3494, 3659, lands tax exempt for commercial or speculative purposes or in non-conformity with the spirit of the statutes."

It will be noted that the court in this case held that if a drainage district holds real property under authority of the statutes and for the purposes therein stated, then such lands are exempt from taxes. However, it will be noted from this opinion that the court reserved its ruling in a case where such property is held by a drainage district for commercial or speculative purposes.

From your letter we assume that the lands in question are held by the district under authority of the statutes and not for speculative or commercial purposes. That being the case, then under the foregoing authorities these lands are exempt from taxation.

On the question of the exemption applying to delinquent taxes which were on the lands at the time of the acquisition of such lands by the district, we think the court,

in State ex rel. City of St. Louis v. Baumann, 153 S. W. (2d) 31, 34, has settled this question. There the court said:

"Even though taxes have been levied and assessed against a tract of land while under private ownership, if it be afterwards acquired by a governmental agency such taxes may not be collected. Bannon v. Burnes, C.C.W.D. Mo., 39 F. 892. And see cases cited in the notes in 30 A.L.R. 413 and 2 A.L.R. 1535. Since the City is seeking to purchase the land in its public governmental capacity and not as a mere fiduciary, the land becomes immune from taxation as soon as the City becomes the owner of it and such immunity would extend to taxes previously assessed and levied."

By this ruling if the taxes were levied and assessed against the lands before the district acquired them, such taxes may not be collected from the district, nor may the lands be sold for payment of the taxes while the same are in the possession of the district.

However, we call your attention to the fact that even if such taxes may not be collected while such lands are owned by the district, yet the lien for the taxes exists subject to the statute of limitations and this lien would be a cloud on the title and enforceable if and when the lands should pass into private ownership. This statement is supported by the ruling of the Supreme Court of the United States in the case of United States v. State of Alabama, 61 S. Ct. 1011, 313 U. S. 275. In that case the court ruled that the lien for taxes existing at the time the property comes into the possession of a tax-exempt body is not extinguished but such acquisition, prevents the holder of the lien from proceeding to enforce it. The court held, however, that such a lien is a cloud on the title, which, with the consent of the governmental owner for the enforcement of the same, could be prosecuted.

CONCLUSION

From the foregoing, it is the opinion of this department that property acquired by a drainage district is

Mr. George O. Dalton

-5-

1-19-43

not subject to sale for taxes during the time of the ownership of such lands by the drainage district.

Respectfully submitted,

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APPROVED:

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TWB:CP