TAXATION:
PROPERTY CLASSIFICATION: Billboard annexed to land presumably under lease agreement between billboard owner and landowner, with right of removal ordinarily reserved in lessee at end of term, in absence of intention of parties to contrary; billboard does not become part of, or any interest in land, and for tax purposes under Sec. 137.010, RSMo 1949, should be classified as tangible personal property and not as real property. Corporation owned bill board to be assessed in county where billboard is situated under Sec. 137.095. If individually owned to be assessed in county of owner's residence, under Sec. 137.090.

March 21, 1951

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Honorable Clarence Evans
Chairman, State Tax Commission
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your request for a legal opinion of this department which reads as follows:

> "There seems to be some difference of opinion as to whether Billboards should be assessed as real estate or as personal tangible property.
>
> "Will you kindly let us have your official opinion and oblige."

Section 137.010, RSMo 1949, relating to the definition of words and phrases found in the taxation and revenue laws reads as follows:

> "The following words, terms and phrases when used in laws governing taxation and revenue in the state of Missouri shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:
>
> "(1) 'Intangible personal property,' for the purpose of taxation, shall include all property other than real property and tangible personal property, as defined by this section;

> "(2) 'Real property' includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon, and all rights and privileges belonging or appertaining thereto;
>
> "(3) 'Tangible personal property' includes every tangible thing being the subject of ownership or part ownership whether animate or inanimate, other than money, and not forming part or parcel of real property as herein defined. (L. 1945 p. 1799 Sec. 3, A. 1949 S.B. 1021)"

Section 137.015, relating to the classification of property for tax purposes, reads as follows:

> "All property in Missouri shall be classified for tax purposes as follows: Class one, real property; class two, tangible personal property; class three, intangible personal property."

The opinion request does not give a detailed statement of the facts upon which it is based, and it is not known whether the writer was referring to those instances where the billboard is owned by one person or business concern and the land upon which it is placed is owned by a different person or business concern; or whether reference was made to those instances in which both land and billboard are the property of the same owner.

Since it appears that the landowner upon whose land a billboard is placed is not ordinarily the owner of the billboard, for the purposes of our discussion, we will assume that the opinion request was meant to refer to those instances where the billboard and real estate upon which it is placed are each owned by different persons.

Strange as it may seem, no Missouri decisions are to be found defining the term "billboard," and we find it necessary to turn to the decisions of other states for such a definition.

In the case of Randall v. Atlanta Advertising Service, 159 Ga. 217, it was held that a "billboard is an erection annexed to the land in the nature of a fence for the purpose of posting advertising, bills and posters."

Also in the case of Cochrane v. McDermott Advertising Agency, 6 Alabama App. 121, it was held that a billboard which is an erection annexed to land, in the nature of a fence, for the purpose of advertising, bills and posters, prima facie constitutes a part of the freehold.

(Underscoring ours.)

We are also unable to find any Missouri decisions which interpret the meaning of Section 137.010, particularly that part defining the term "real estate." While we are aware that the object of this statute is to provide a method of classifying property for tax purposes, and that the terms used shall have only that meaning ascribed to them in said section unless the context clearly denotes a different meaning, it appears that the term "real estate" as used therein is not given another or different meaning than is ordinarily given to it in legal terminology.

In view of the above definitions, particularly the latter, upon first thought it would seem that the definition of real property found in Section 137.010 would be broad enough to include the term "billboard." However, upon closer examination of the statute, it appears that a "billboard" cannot be classified as real property or as any right or privilege belonging to land, but that it more nearly meets the description of those things classified as "tangible personal property" under subsection 2 of the above section.

The distinction between real property and personal property, given in Section 137.010, does not appear to differ from the distinction between real and personal property under the English common law, and we quote from pages 1 and 2, of Tiedman on Real Property, as follows:

> "In English common law, property is divided into two classes, real and personal. Real property is such as has the characteristic of immobility or permanency of location, as lands and rights issuing out of land. Personal property is every species of property which does not have above-mentioned characteristic * * *. All real property or things real, are said to be comprehended under the terms, lands, tenements, and hereditaments."

Section 3439, Mo. R. S. A. 1939, (Now Section 442.010 RSMo 1949) provides what the term "real estate" shall include and reads as follows:

> "The term 'real estate' as used herein, shall be construed as co-extensive in meaning with lands, tenements and hereditaments, and as embracing all chattels real."

This section appears to change the common law distinction between real and personal property, in that leasehold estates (which were personal property, under the common law system) are to be regarded as "an interest in real estate" under above statutory provisions. Section 936 of the 1899, Revised Statutes of Missouri is identical with that of Section 3439, supra, and in commenting on the legal effect of the former statute in the case of Orchard v. Store Company, 225 Mo. 413, at l. c. 437, the court made the following statement:

> "The section of the statute quoted clearly says that for purposes of conveyance, a leasehold is to be considered as real estate. But does it mean more than that? Does it not mean that a leasehold is to be assigned or conveyed by a quitclaim or a warranty deed or mortgage, just as any other interest in land is to be conveyed? We think it means only that. It does not attempt to convert what was personal property at common law into real estate. * * *"

It appears that this quoted portion of the opinion is in clear and unmistakable language, and that further discussion of same is unnecessary, except that we wish to emphasize the statement <u>that only for the purposes of conveyance is a leasehold to be considered real estate, and that this section does not attempt to convert what was personal property at common law into real estate</u>.

Also in the case of National Bank of Kansas City v. Nee, 85 F. Supp. 840, it was held that the common law ruling of a leasehold being personal property, has not been changed in Missouri, by above statute.

At. l. c. 842, the court said:

> "1. Section 3439, R. S. Mo. 1939, Mo. R.S.A., construes the term 'real estate' as follows: 'The term "real estate," as used herein, shall be construed as coextensive in meaning with lands, tenements and hereditaments, and <u>as embracing all chattels real.'</u> (Emphasis mine.)
>
> "This statute did not change the common law rule that leasehold estates are personal property. It was so held in Orchard v. Wright-Dalton-Bell-Anchor Store Co., 225 Mo.

414, 125 S.W. 486, loc. cit. 497, 499, and 500, 20 Ann. Cas. 1072; also Springfield Southwestern R. Co. v. Schweitzer, 246 Mo. 122, 151 S. W. 128, loc. cit. 131.

"It would follow from the above that all property strictly embraced within the leasehold would be 'chattels real' and would belong to the lessee."

From the foregoing it is our thought that the distinction between real and personal property under the English common law system is still recognized in Missouri, and that the classification given to property for the purposes of taxation found in Section 137.010, supra, is substantially the same as the common law classification of real and personal property.

Applying the common law rule, as well as that announced in the Kansas City case, it is our further thought that even though a billboard is annexed to real estate, it does not lose its distinctive characteristics as personal property and become a part, or any interest in the real estate, for the reason that it is usually annexed under the terms of a written lease agreement, with a right reserved in the lessee to remove the billboard at the end of the term of the lease. Since the parties do not intend that the billboard shall become a part, or any interest in the land itself, we know of no statutes applicable to such cases which would classify billboards as real estate contrary to the intention of the parties. Certainly the provisions of Section 137.010, would be no authority for such a classification, rather it appears that since the lease and leasehold property i.e., billboards are "chattels real," and chattels real are personal property, that a billboard could only be classified as tangible personal property under subsection (3) of said section. That in many instances billboards are owned by manufacturing or business corporations located in counties other than those in which the billboards have been erected. Such circumstances quite naturally raise the inquiry as to whether the billboards shall be assessed for taxation purposes in those counties in which they have been erected, or whether they shall be assessed to the corporations in those counties in which such corporations are located.

Having ruled above that billboards were personal property, and should be classified as tangible personal property for taxation purposes, we desire to call attention to Section 137.095, RSMo 1949, which provides those counties in which the tangible personal property of business and manufacturing corporations shall be assessed, and which does not require any further exposition on our part; said section reads as follows:

> "All tangible personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the first day of January of the year for which such taxes may be assessed, and every business or manufacturing corporation having or owing tangible personal property on the first day of January in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located, shall make return thereof to the assessor of such county or township where situated, in the same manner as other tangible personal property is required by law to be returned."

In those instances in which billboards are the tangible personal property of an individual, such property shall be assessed in the county of the owner's residence, as provided by Section 137.090, RSMo 1949, and which reads as follows:

> "All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except tangible personal property, belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction."

CONCLUSION

In view of the foregoing, it is the opinion of this department that a billboard erected upon the land of another, presumably under the terms of a lease-agreement, where the right to remove the billboard at the end of the term is usually reserved to the lessee, and in the absence of a contrary intention of the parties, the billboard does not become a part of the land, nor does the lessee acquire any right or privilege in real estate under the English common law. That under the common law, a lease and the leasehold property were chattels real, and even though annexed to land personal property did not lose its identity as such, under the circumstances. That the common law distinction between real and personal property is still recognized in Missouri, and a billboard annexed to real estate under the conditions mentioned, would be a chattel real or personal property, and not real property or any interest therein.

Hon. Clarence Evans

It is the further opinion of this department that the classification of real and personal property for tax purposes given by Section 137.010, RSMo 1949, is substantially the same as the general classification of real and personal property under the common law, and that a lease, and leasehold property consisting of a billboard, are chattels real and personal property. The billboard being personal property should be classified as tangible personal property for tax purposes, under the provisions of said section.

In those instances in which a billboard is owned by a business or manufacturing corporation located in a county other than the one in which the billboard has been erected, such corporation shall, under the provisions of Section 137.095, RSMo 1949, make return thereon to the assessor of the county or township in which the billboard is situated, in the same manner as other tangible personal property is required by law to be returned.

In all other instances in which the billboard is the tangible personal property of an individual, such property shall be assessed in the county of the owner's residence, under the provisions of Section 137.090, RSMo 1949.

Respectfully submitted,

PAUL N. CHITWOOD
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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