

TOWNSHIP WARRANTS: Township warrants cannot be used to pay township taxes, even if for the same year.

January 29, 1942

Hon. Arthur U. Goodman, Jr.
Prosecuting Attorney
Kennett, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated January 6, 1942, which reads as follows:

"Please favor my office with an opinion on the following matter:

"If a taxpayer has a 1941 township warrant for \$3.00, drawn on the road and bridge fund, and offers same in payment of road & bridge taxes for the year 1941 in the amount of \$3.00, is the township collector required to accept such warrant in payment of such tax; and is the township trustee in turn required to receive such warrant and give the collector credit therefor as cash?

"Under the same facts as above, if the warrant is for \$10.00 and the road & bridge tax only \$3.00, can the warrant be used to pay other taxes, for example, township revenue?"

Section 11082 R. S. Missouri, 1939, reads as follows:

"Except as hereinafter provided, all state, county, township, city, town,

village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes. Warrants drawn by the state auditor shall be received in payment of state taxes. Jury certificates of the county shall be received in payment of county taxes. Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose. Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant; but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, or there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county or city for that year."

According to the facts in your request, the question of whether or not the warrant was issued during the year for which the tax was levied and attempted to be paid is not in issue. The above section provides that the payment of certain taxes should be in certain legal tender. It also provides exceptions as to warrants drawn by the state auditor, jury certificates of the county, past due bonds or coupons of certain government organizations; but it does not describe the exception of township warrants, either general or warrants upon the road and bridge fund.

This section prescribes mainly the payment of certain taxes in certain legal tender. It is very noticeable that in this section the word "shall" is used. When the word "shall" is used it has been construed to be mandatory upon the duties of the officer.

In the case of State v. Wurdeman, 246 S. W. 189, l.c. 194, Par. 6,7, the court said:

"* * * The statute says the defendant 'shall be entitled to be discharged' save in the two excepted situations, supra. Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute. Especially is this true in a statute calling for strict construction."

In the construction of statutes one must take into consideration the exceptions as stated within the body of the same section. It is very noticeable, under Section 11082, supra, that the exceptions as to the payment of legal tender of all taxes does not include township warrants. That such exceptions must be strictly construed was held in the case of State v. Breckenridge, 282 S. W. 149, l. c. 150, where the court held:

"* * * The language of the exception ought not to be enlarged in its scope by an interpretation out of accord with its ordinary meaning. As a rule, exceptions in statutes are strictly construed."

It has also been held in this State that the general rule is that where a certain procedure is set out for the carrying out of any statutory law it excludes any other procedure. Under the facts in your request, and under Section 11082, supra, all taxes must be paid in certain legal tender which does not include warrants.

In the case of State v. Smith, 111 S. W. (2d) 513, l. c. 514, Par. 2, the court, in upholding this rule said:

" * * * To uphold appellant in his contention would 'violate the well-known canon of statutory construction, viz. that the expression of one thing is the exclusion of another.' State ex inf. Conkling ex rel. Hendricks v. Sweaney, 270 Mo. 685, loc. cit. 692, 195 S. W. 714, 716."

It has also been held, in this State, that, in the interpretation and construction of the statutes the legislative interpretation may be referred to. It was so held in the case of State ex rel Board of Fund Com'rs., et al. v. Smith, Auditor, 96 S. W. (2d) 348, l. c. 352, (Par. 4), where the court said:

"While great weight and deference will be given by the courts to the legislative interpretation of acts of the General Assembly as indicated in this case by the House resolution above referred to, such interpretations cannot be binding or conclusive when opposed to the clear meaning of the act."

Section 11082, supra, before 1929 did not include the following, which now appears in the Revised Statutes of Missouri, 1939:

"* * * past due bonds or coupons of any county, city, township, drainage district, levy district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied

for the payment of bonds or coupons of
the same issue, but not in payment of
any tax levied for any other purpose
* * * ."

In 1929, Section 12903 R. S. Missouri, 1919, which is now Section 11082, R. S. Missouri, 1939, was amended by inserting, between the word "township" and the word "or", in the eighth line of said section, the following words: "drainage district, levy district." In other words, until 1929 the section did not apply to drainage districts or levy districts.

By passing this amendment in 1929 the legislature construed that under Section 11082, supra, all taxes must be paid in legal tender with the exception of warrants given by certain governmental agencies described in the exceptions. The exceptions did not include drainage districts. In construing this section, in the case of Kercheval v. Ross, 7 F. Supp. 355, 1. c. 356, the court said:

"When the bonds held by plaintiffs were issued and sold, the Missouri statute providing for the manner of payment, and the legal tender therefor, read thus: 'Except as hereinafter provided, all state, county, township, city, town, village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes.' Laws of Missouri, 1911, p. 418.

"There are exceptions to the above statute, but they have nothing to do with drainage districts. There was added to the above statute, by an amendment made in the year 1929 (Laws of Mo. 1929, p. 432 (Mo. St. Ann. Sec. 9911, p. 7963)), an exception to the general requirement

of the statute which did have to do with drainage districts, which read as follows: 'Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose.' Section 9911, R. S. Mo. 1929 (Mo. St. Ann. Sec. 9911, p. 7963).

"Perforce the terms of the statute last quoted, defendants admit that they have accepted in payment of drainage taxes past-due bonds and coupons of defendant drainage district, and concede that they will continue to do so, unless restrained.

"So, plaintiffs contend that, as to an insolvent drainage district, and as to them, as the owners, holders, and bearers of well-nigh one-half of the outstanding bonds of defendant district, the above statute passed in the year 1929 is unconstitutional, for that it is in violation of both section 10 of article 1 of the Federal Constitution, and of section 15 of article 2 of the Constitution of Missouri of 1875, which sections each forbid the state of Missouri from passing any law impairing the obligation of a contract."

At page 359, in the same case, the court further said:

"* * * I am not saying that a state has no constitutional power to pass a statute which makes state and county warrants, and bonds and other obligations, of its own divers subdivisions

and instrumentalities of government, legal tender for the payment of debts due to the state or its subdivisions of government. This a state may do as to future debts. Of course, a state could not make such obligations legal tender for the payment of all debts, both public and private, because of the plain letter of the Federal Constitution. The question here cuts deeper, however, and simply stated, is: May a state by statute change the legal tender in which the debts of its governmental subdivisions are by law made payable, as to debts created on the faith of an existing law, without impairment of the obligation of a contract? I am of opinion that a state has no such power. It is so clear that what is attempted to be done here does violate the obligation of a contract, that the proposition scarcely needs argument or citations of authority. But the cases so holding, both that the thing here done does constitute the violation of the obligation of a contract, and that such is forbidden to a state, are numerous.* * * * *

This case was an injunction suit brought in the Federal Court which assumed jurisdiction for the reason that the legislature, by its amendment of the section which is now Section 11082, passed the amendment of said section in 1929, which impaired the obligations of contracts under Article 1, of Section 10 of the Constitution of the United States. The court, in the above partially quoted opinion, held to the effect that since all of the bondholders of the drainage district had purchased the bonds involved, before the passing of the 1929 amendment, the bondholders who had attempted to pay their taxes in the drainage district and receive credit of one hundred per cent upon their

investment, when, in truth and fact, the bonds were only worth sixty cents on the dollar, the passing of the amendment would be a violation of the contract entered into by the other bondholders, and the legislative amendment was unconstitutional as to the purchase of all the bonds. In other words, the Federal Court, in so holding, held that the exception must specifically state and direct the warrant that could be used in the payment of taxes.

In reading Section 11082, supra, and according to the holding in Kercheval v. Ross, supra, it is not specifically stated that warrants issued by a township road district could be used in the payment of taxes levied and assessed by the township road district.

CONCLUSION

In view of the above authorities, it is the opinion of this Department, that if a taxpayer has a 1941 township warrant for three dollars, drawn on the road and bridge fund, and offers the same in payment of road and bridge taxes for the year 1941, in the amount of three dollars, the township collector is not required to accept such warrant in payment of such tax, and the township trustee in turn is not required to receive such warrant and give the collector credit therefor as cash.

It is further the opinion of this Department that since we have ruled that the warrant cannot be used, as set out in the first paragraph of this conclusion, we need not answer the second paragraph of your request as to whether or not the warrant can be used to pay other taxes such as township revenue.

Respectfully submitted

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APPROVED:

VANE C. THURLO
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