TAXES--STATE LIABILITY: Legislature has no constitutional power to authorize State debts in form of special municipal assessments on real estate of the State.

April 22, 1935.

FILED
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Mr. Truman L. Ingle, Superintendent
Missouri School for the Deaf
Fulton, Missouri

Dear Sir:

Your request for an opinion, dated April 12, 1935, is as follows:

> "We have received from the City of Fulton, a city of the third class, a Tax Bill for the amount of $360.00 for the improvement (paving) of one of the streets passing our school campus.
>
> "There is a doubt in my mind as to whether or not we are liable for this assessment.
>
> "Will you please let me know whether or not the state can be taxed for street improvement made by the city, on streets on which state property fronts."

Article XI, Section 16 of the Missouri Constitution of 1865 exempted from taxation property belonging to the United States, the State, counties, municipal corporations, and public school property. In the Constitution of 1820 there was no limitation placed upon the Legislature in their power to grant exemptions to taxation and that condition continued until the Constitution of 1865. In 1875 our present Constitution became the law, and Article X, Section 6 provides:

> "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 of 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."

Article X, Section 7 of the Missouri Constitution provides:

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

Thus we see that under our present Constitution, property "of the State" is exempt from taxation. We also see the tendency of the Constitution of 1875 was to take from the Legislature some of their common law prerogative of exemption from taxation, which prerogative had been freely exercised in prior years.

We see also, that exemptions from taxation other than enumerated in Article X, Section 6 are void.

Section 9688 R. S. Mo. 1929, provides:

> "The 'Missouri school for the blind' at St. Louis, and the 'Missouri school for the deaf' at Fulton shall be regarded, classed and conducted wholly as educational institutions of the state."

Section 9689 R. S. Mo. 1929, provides:

> "The government of each of these schools shall be vested in a board of managers, composed of five mem-

> bers, appointed by the governor with the consent of the senate. The members of said board shall be appointed on or before the first day of February, in the odd numbered years, by twos and threes, as may be required for each of said boards, and they shall hold their office, respectively, for the term of four years, and until their successors are appointed and qualified. After such appointments have been made and have been approved by the senate, the secretary of state shall notify such persons of their appointment."

Section 9705 R. S. Mo. 1929, provides how the real estate of the Missouri School for the Deaf shall be controlled, and reads as follows:

> "The board of managers of each school shall have the care and control of all the property, real and personal, owned by such school, and the title to all real estate or personal property now owned by such school, or by the state for its use, or that may hereafter be purchased by or donated to such school shall be vested in such board of managers of the respective schools, for the use and benefit of the said school. The board of managers of either school shall not sell or in any manner dispose of any real estate belonging to the school without an act of the general assembly authorizing such sale or disposal of such real estate. The boards of managers shall provide their respective schools with an official seal."

We see that under the present law the Missouri School for the Deaf is a body corporate, and that the control of its property is under the Board of Managers ap-

pointed by the Governor, and that the title to all property connected with said school is, by legislative act, vested in the Board of Managers for the use and benefit of said school.

This question presents itself in your request: In the face of the Constitution exempting State property from taxation, can the City of Fulton legally run a special assessment against property belonging to the Board of Managers of the Missouri School for the Deaf in which the Board holds legal title for the use and benefit of said school?

The section of law which vests the title in the Board for certain uses admits that before the passage of said act certain properties were held by a legal title in the ownership of the State of Missouri to the use of said school. Said section of law, transferring title from the State of Missouri to the Board of Managers, first appeared in Laws of 1921, page 649, and prior to that time the State had legal title to said property in its own name.

Does this legislative transfer of legal title in 1921 change the title to the extent that now this property is not "the property of the State" which under the constitution is exempt from taxation? All depends on what the people in thier Constitution intended when they used the phrase "of the State", when exempting property from taxation.

The preposition "of" has been defined by Noah Webster to mean in its general sense, the following:

> "Proceeding from; belonging to; connected with; concerning."

We have been unable to find the phrase "property of the State", used in any Constitution judicially defined, but under a Statute in Kansas which provides that judgments shall be a lien on "real estate of the debtor" in the case of Burke v. Johnson 15 Pac. 204 l. c. 207; 37 Kan. 337, that Court said:

> " 'Real estate of the debtor,' means that which is in fact of or belonging to the debtor."

We do find the word "State" as used in the Federal Constitution judicially defined in Karem v. United States 121 Fed. 250, l. c. 256; 61 L. R. A. 437, when that Court said:

> "When the constitution speaks of a state, and inhibits the doing of certain things, it sometimes includes under the term 'state' every instrumentality or agency of the state which presumes to act by authority of the state,* * * *"

Where a State Board was authorized to take and hold State property for State purposes, the Supreme Court of Wisconsin holds that the property is State property, and in Milwaukee v. McGregor, 121 N. W. 642, l. c. 642; 140 Wis. 35, that Court said:

> "The fact that the Board is made a state agency to take and hold title to property for state purposes does not cut any figure in the matter. The building is not designated to be, in any proper sense, the property of the board, except as representing the state.
>
> "So the question comes down to whether the ordinary charter and ordinance regulations of a city requiring submission to local supervision, as regards the manner of constructing, altering and repairing buildings, have any application to state buildings. That must be answered in the negative. It is plainly so ruled by the familiar principal that statutes, in general terms, do not apply to acts of the state. Moreover, express authority to a state agency doing a particular thing in a particular way supersedes any local or general regulation conflicting therewith."

Special assessments for local improvements, although levied by virtue of the taxing power, have been

held in many cases by our Supreme Court not to be taxes within the meaning of this constitutional section exempting "property of the State" from taxation.

In the late case of Corrigan v. Kansas City, 211 Mo. 608, l. c. 627; 111 S. W. 215, Judge Valliant said:

> "Section 3, article 10, of the State Constitution requiring taxes to be uniform, and sections 6 and 7 of the same article, the one exempting properties of certain kinds and the other forbidding any other exemptions, refer only to general taxes; those sections neither exempt nor forbid the exemption of properties from special assessments for local improvement."

FIRST CONCLUSION.

We come now to our first conclusion. It is the opinion of this office that the constitutional exemption of State property from taxation exempts not only the State property where the legal title to same is in the name of the State, but exempts also that property, both personal and real, which is used as an instrumentality and agency of the State even though the legal title to said property be not in the State's name.

The Missouri School for the Deaf is a corporate body created by the Legislature as an instrumentality of this State. The Board of Managers vested with legal title to all the institution's property are creatures of the Legislature holding said title to the use of said state instrumentality. They hold but a bare legal title where the power of sale can only be exercised by Legislative authorization. The entire use of equitable interest in said property is vested in Missouri School for the Deaf, and it is only to said uses that they can legally exercise any control over said property. The property of the Missouri School for the Deaf falls within that constitutional provision exempting the "property of the State", from taxation, for the preposition "of" as used

in said constitutional provision includes all property which is in fact of and belonging to the State. "Of" as used in said constitutional provision has the meaning of its general sense as defined by Noah Webster, supra.

We are further of the opinion that this constitutional exemption of State property from taxation, according to the cases decided thereunder, refers only to general taxes, and by its terms neither exempts nor forbids the Legislature exempting properties from special assessment for local improvements. If the State of Missouri be not liable on this special tax bill, it is for reasons other than the constitutional provision exempting State property from taxation, for the exemption of this constitutional provision was not intended to exempt State property from special assessments.

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Having come this far with our conclusion, we must next determine the nature of this tax bill of the City of Fulton, whether it be a tax bill for a general tax or a tax bill based upon a special assessment for local improvements creating a constitutional liability on the part of the State.

Fulton is a city of the third class, and the Statutes providing for local improvements in cities of the third class would be in point. Improvements of streets in cities of third class are either by authority of Sections 6814 or 6841 R. S. Mo. 1929.

Section 6814 R. S. Mo. 1929, provides as follows:

> "The city council shall have power within the city, by ordinance, in all cases where the cost does not exceed sixty cents per front foot per annum upon the property abutting upon any street, avenue, alley or public place to be improved as in this section hereinafter provided,

to cause the streets, avenues, alleys and public places of the city, or any part thereof, to be sprinkled, oiled, repaired, surfaced and resurfaced, and the cost thereof to be provided for and defrayed by a special tax to be assessed in favor of the city or contractor on the adjoining property fronting or bordering on the streets, avenues, alleys and public places where such sprinkling, oiling, repairing, surfacing and resurfacing is proposed to be done, in proportion that the linear feet of each lot fronting or bordering on the street, avenue, alley and public place so to be sprinkled, oiled, repaired, surfaced and resurfaced bears to the total number of linear feet of all the property chargeable with the special tax aforesaid in the territory embraced by the contract under which said sprinkling, oiling, repairing, surfacing and resurfacing is to be done. The above work may be done by said city and an accurate account of the cost thereof kept by said city or may be contracted for annually by the city council at such time and under such terms as shall be provided by ordinance, and the city shall be divided into convenient sprinkling, oiling, repairing, surfacing and resurfacing districts for the above purpose, and each district shall be let separately. The special tax bill spoken of shall be and become a lien on the property charged therewith from and after the commencing of such pprinkling, oiling, repairing, surfacing and resurfacing of such streets, avenues, alleys or public places under the provisions of an ordinance providing therefor, and

shall be prima facie evidence of the liability of the property charged therewith to the extent and amount therein specified, and may be collected of and from the owner of the land in the name of and by the city or contractor as any other claim in any court of competent jurisdiction with interest at the rate of eight per cent per annum, and they shall be issued and collected in the manner hereafter provided by ordinance: Provided, that in no case shall the provisions of this section apply where the cost of any such improvement shall exceed the sixty cents per front foot per annum upon the property abutting upon any street, avenue, alley or public place.

Section 6841 R. S. Mo. 1929, provides in part as follows:

"Any city of the third class shall have full power and authority, under the following conditions, to do the following things: To levy and collect taxes, for general revenue purposes, on all property within the limits of such city, taxable according to the laws of this state. To grade, pave (the word pave as herein used meaning to improve with all kinds of street paving, including macadamizing), gutter, curb and otherwise improve streets and alleys, and parts of same, and to reconstruct and repair any paving, grading, guttering and curbing, and to make and repair sidewalks, bridges, culverts and crosswalks, and to condemn and destroy any sidewalk deemed unfit for use, and to replace the same wihh a new one of the same or different material, and to exercise control

over streets and alleys, and establish and re-establish grades thereon. * * * * The cost of paving, guttering and otherwise improving any alley and the roadway part of any street, that is the part between curb lines, including street intersections, shall be charged against the lots and ttracts of land fronting or abutting on the street or alley so improved along the distance improved, in proportion to the number of fronting or abutting feet. When the paving or guttering on any street or alley is only repaired (repaired as here used shall not include any improvement where the entire surface of a paving is renewed, but such renewal shall be considered as paving), the cost of such repairing shall be charged in the following manner, namely: The street or alley shall be divided into sections, a section being the distance from the center line of one cross or intersecting street to the center line of the next cross or intersecting street, and the cost of repairing each section shall be charged against the lots and tracts of land fronting or abutting on that section in proportion to the number of fronting or abutting feet. All lands owned by any county or other political or municipal subdivisions, cemeteries and railroad rights of way, fronting or abutting on any of said improvements shall be liable for their proportionate part of the cost of such improvement, and tax bills shall be issued against such property as against other property, and any county, city or other political or municipal subdivision that shall own any such property shall out of the general revenue funds or other funds pay any such tax bill, and in any case where any county, city

> or other political or municipal subdivision, cemetery company or owners or railroad company, shall fail to pay any such tax bill, the owner or holder of same may sue such county, city or other political or municipal subdivision, cemetery company or owners or railroad company on such tax bill, and be entitled to recover a general judgment against such county, city or other political or municipal subdivision, cemetery company or owners or railroad company. Any of said street improvements may be paid for in whole or part by such city out of general revenue funds, or other funds which the city may have for such purposes if the council so desires, but all such improvements shall be paid for with special tax bills, unless the proceedings of the city for same specify that payment will be made out of the general revenue funds or other funds in whole or part. The charges made against lands for all of said improvements shall be known as special assessments or taxes, for improvments, and shall be charged and assessed by issuing special tax bills against the lands chargeable with the cost of the improvements; each special tax bill so issued shall be a special lien on the land against which it is issued.* * * *."

Both of the above Sections authorize the city of Fulton to issue special tax bills against abutting property owners for local improvements. Where a street is surfaced or resurfaced by paving one must look to one or the other of these two sections in determining by what authority the City of Fulton acted in issuing tax bills against the State as an abutting property owner.

this tax is not levied and collected as other city tax is levied and collected. Both Sections authorize the issuance of a special tax bill against abutting property owners for local improvements which local improvements include the surfacing and paving of streets. In Section 6841 the Legislature specified particularly their intention to allow the city to issue special tax bills against abutting "lands owned by any county or other political or municipal subdivisions, cemeteries and railroad rights of way", and the Statute expressly specified their intention to make the owners of said lands liable for their proportionate part of the cost of improvement. In this grant of power when they undertook to mention specifically land owned by all the political subdivisions of the State, the Legislature did not name the State as a land owner chargeable with this special assessment, and if the State as a land owner is chargeable, it is because the power to specifically assess all abutting property owners by the general terms of the Statute if of itself a grant of power to specifically assess the State when the State happens to be one of the abutting property owners. It is indeed peculiar that while the Legislature was clearly expressing their intentions to include all political subdivisions of the State as a proper subject of a special assessment, they did not include specifically the State if they intended such a grant of power to cities of the third class.

The Legislature has the right to authorize cities of the third class to incur indebtedness on themselves or on the part of the State for purposes and in amounts not prohibited by the Constitution, but where the Constitution imposes limitations upon which valid State debts can be incurred by legislative act, then no debt can be incurred except for the purposes and in the manner prescribed by said Constitution. Let us look to the purported indebtedness of the State authorized by the general terms of this Statute and see if constitutional limitations preclude this tax bill from being a valid legal obligation of the State.

Article IV, Section 44 of the Missouri Constitution provides how far the Legislature can go in authorizing a State debt as follows:

> "The General Assembly shall have no power to contract or to authorize the contracting of any debt or liability on behalf of the State, or to issue bonds or other evidences of indebtedness thereof, except in the following cases:"

Thereafter the above constitutional provision sets out in four separate paragraphs emergencies in which the Legislature has power by Statute to authorize the contracting of a debt or liability on behalf of the State. Not one of those enumerated emergencies, by word or by implication, gives power to the Legislature to authorize the incurring of debts on the part of the State to fund or refund cities of the third class or contractors for improvements made in road abutting property of the State. These general Statutes authorizing special tax bills in cities of the third class should be interpreted in the light of this constitutional provision and the purposes for which State debts can be authorized by legislative act. If the effect of these general Statutes is to authorize special tax bills (liability on behalf of the State), contrary to the power of the Legislatureto authorize indebtedness against the State, then these tax bills are void and of no force and effect insofar as they create any legal demand against the State.

59 Corpus Juris, page 214, Section 351, states the law thus:

> "Where the constitutions impose limitations, no valid debt can be created except for the purposes and in the manner prescribed. Neither the legislature nor the officers and agents of the state, nor all combined, may create a debt for or on behalf of the state, except in the manner provided for by the constitution; accordingly, where the constitution preseribes the only way in which a debt of the state can be contracted, any attempt by the legislature to create one in any other way is futle, although its purpose may be to reduce and not to increase the debt of the state.

Although Corpus Juris does not cite any Missouri cases, we believe it states the law applicable in Missouri.

SECOND CONCLUSION.

We are of the opinion that the tax bill in question is for a special assessment for local municipal improvements in the City of Fulton, a city of the third class, and not a tax bill representing a general assessment on State property for taxation.

We are further of the opinion that there is no constitutional provision in Missouri exempting State property for special assessments for local improvements, but that constitutional provision which provides the only purposes for which the Legislature can pass a Statute creating a legal liability against the State, although not exempting State property from special assessments for local municipal improvements, precludes the passage of a legislative act authorizing any indebtedness on the part of the State intended to fund or refund the City of Fulton or individual contractors for improvements made in roads abutting on property of the State.

We are further of the opinion that the special tax bill in question based upon general statutes for its validity, is not a legal claim against the State or the State Board in control of this property. To say that said tax bill is a legal claim would necessitate reading into those general statutes an invitation on the part of the Legislature to include the State as one of those body politics which we believe the Legislature intentionally omitted mentioning when expressly naming other body politics and the subdivisions of the State as land proprietors subject to this special assessment. To say that said tax bill is a legal claim against the State is to nullify that constitutional provision limiting the Legislature in authorizing debts and liabilities against the State for any particular purposes. The Constitution is too plain for any forced construction.

We do not think the Statute authorizing special tax bills against abutting property owners in cities of the third class is unconstitutional. It is our opinion that the Legislature, by the general terms of said Statute, did not intend to make a provision of law imposing liability on the State as an abutting property owner because they happened to pass a general municipal regulatory Statute.

Respectfully submitted

WM. ORR SAWYERS
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APPROVED:

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