

GENERAL ASSEMBLY: The General Assembly has the power to appropriate money for the refund of taxes collected under an unconstitutional statute.



February 25, 1953

Honorable Frank C. Mazzuca
Representative
Jackson County, 1st District
House Post Office, Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"In State ex rel Transport Mfg. and Eqp. Co. vs. Bates, et al., reported 359 Mo. 1002, 224 SW 2nd 996, the Supreme Court of Missouri held invalid and unconstitutional a portion of an act found L. Mo. 1947 Vol. II pp. 431-436 inclusive. It was held that the act contravened section 3 Article X Constitution of Missouri 1945. This act had imposed a 2% tax upon the purchase price of motor vehicles, and prior to having been held invalid in the case mentioned, the State of Mo. had collected many thousands of dollars thereunder. All of such collections were, or have been since, credited to funds of the Missouri State Highway Commission.

"Upon these facts I respectfully request your official opinion as to the power of the current General Assembly to enact legislation authorizing the establishment of claims against the State based upon collections made under this act and further appropriating money for the payment of such claims as may be legally established."

Honorable Frank C. Mazucca

The case which you have referred to in your letter of inquiry was decided by the Supreme Court of Missouri, En Banc, on November 14, 1949. The effect of the decision was to hold unconstitutional a statute imposing a use tax upon the acquisition of certain motor vehicles. Previous to the decision the tax had been paid by numerous persons, the proceeds thereof having been deposited in the state treasury.

At the outset we wish to point out that at all times subsequent to such decision a method for the refund of such taxes existed. The appropriate procedure was found in Section 144.190, RSMo 1949, which is still in full force and effect. We quote in part from such section:

"2. If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due from the person under this chapter, and the balance shall be refunded to the person, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within one year from date of overpayment."

(Emphasis ours.)

This statute was under consideration by the Supreme Court of Missouri in *Kleban v. Morris*, 247 S.W. (2d) 832, decided April 14, 1952. In that case an effort was made to force certain disbursing officials of the State of Missouri to allow and pay to the plaintiffs payments previously made under the statute held unconstitutional in *State ex rel. Transport Manufacturing and Equipment Company v. Bates, et al.*, referred to supra. Recovery was denied upon the ground that the action was in effect one against the state, and that inasmuch as the immunity from suit of the state had not been waived, the action could not be maintained. However, in the course of the opinion the court pointed out that Section 144.190, RSMo 1949, was in effect and did provide a method by which such illegal exactions might be refunded. We direct your attention to the following portion of the opinion appearing at l.c. 839:

Honorable Frank C. Mazucca

"VI. The Sales Tax Act provides for the refund of taxes illegally collected thereunder when claims therefor are filed within one year from the date of payment. § 144.190, RSMo 1949, V.A.M.S. The Director of Revenue is in charge of the Department of Revenue of this State and the collection of the revenue, Mo. Const. art. IV, § 22, Chs. 32, 136, RSMo 1949, V.A.M.S., including the sales tax, which Sales Tax Act is to be administered by said Director. Ch. 144, Id. The act contemplates the filing of the claim with the Director of Revenue. § § 144.190, 144.260; State ex rel. St. Louis Shipbuilding & Steel Co. v. Smith, 356 Mo. 25, 201 S.W. 2d 153, 155.

"* * * The instant action is one against the State, and State ex rel. Transport Mfg. & Eq. Co. v. Bates, 359 Mo. 1002, 224 S.W. 2d 996, considered the Legislature had power to enact a use tax but the use tax provisions were unconstitutional on account of a certain exemption. This holding did not affect the provisions of the Sales Tax Act providing a method for the refund of taxes illegally collected. The word 'overpayment' in § 144.190 (quoted under III, supra) includes taxes 'illegally collected' as well as the other payments mentioned in the section."

(Emphasis ours.)

From the foregoing it appears that a method has been provided by which claims for refunds might be filed and allowed. We direct your attention also to Laws of 1949, page 198, and Laws of 1951, page 47, both containing appropriations for the payment of such claims when allowed.

What has been said we believe answers your question with respect to the power of the General Assembly to provide for a method of establishing claims against the

Honorable Frank C. Mazzuca

state under the facts outlined in your letter of inquiry and for the appropriation of money to pay such claims.

One further question presents itself as a corollary to what has been said heretofore. It is possible that the General Assembly might wish to extend the time for filing such claims based upon payments made under the particular statute held unconstitutional in *State ex rel. Transport Manufacturing and Equipment Company v. Bates, et al.*, mentioned supra, beyond the one year period provided in Section 144.190, RSMo 1949. That statute requires such claims to be filed within one year from the date of overpayment as appears from the portion of the statute quoted supra.

It is a general rule that the powers of the General Assembly are plenary, and except as such powers may be restricted by constitutional provisions, the General Assembly may exercise them in any manner it sees fit. We, therefore, are of the opinion that if the General Assembly in recognition of a moral obligation to extend the time for presenting claims for the refund of taxes illegally collected, such as those here under consideration, desires to extend the time within which such claims may be filed, it has full power to do so.

CONCLUSION

In the premises we are of the opinion:

- (1) That a method for the refund of taxes collected under the use tax statute held unconstitutional in *State ex rel. Transport Manufacturing and Equipment Company v. Bates, et al.*, 224 S.W. (2d) 996, has been provided under Section 144.190, RSMo 1949, subject to the limitation that such claims must have been filed within one year from the date of overpayment;

Honorable Frank C. Mazzuca

- (2) That the General Assembly has the power to extend the time within which such claims may be presented; and
- (3) That the General Assembly has power to appropriate money for the payment of such claims as are comprehended within (1) and (2) of this conclusion.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB, Jr./fh