TAXATION: BOARDS OF EQUALIZATION: Must give effect to SenateBill 34, page 419, laws of Mo. 1933 in setting valuations for 1934 taxes.

4.25

April 23, 1934

State Tax Commission
Jefferson City, Missouri

Hon. A. J. Murphy, Chairman

Gentlemen:

We acknowledge receipt of your request for an opinion of this office reading as follows:

> "Senate Bill 34, passed at the '33 Session that has to do with the valuation of lands in drainage or levee districts, imposes on the State Tax Commission the duty of taking into consideration certain facts in arriving at the valuation of assessed lands. This law was passed without an emergency clause and became effective on July 24, 1933.
>
> This Department would like a ruling as to whether or not this act will have any effect on the assessment made as of June 1, 1933."

Senate Bill 34, referred to above, is found at page 419, Laws of Mo. 1933. This Act consists of two sections, portions of which read as follows:

> SECTION 1. That in determining the assessed valuation of lands * * * on which benefit assessments have been levied * * * the county assessors * * * state tax commission, the state and county boards of equalization and appeals, shall ascertain and determine the amount * * * of then existing benefits assessed * * * and for which * * * no levy * * * for principal has been paid, exclusive of delinquent levies * * * and take into consideration the amount thereof in determining the

value of such lands * * * for assessment for taxation for general purposes, and the difference, * * * between the value of such lands * * * taking into consideration the drainage or levee improvements and amount of the * * * benefits assessed * * * and for which * * * no levy * * * for principal has been paid, exclusive of delinquent levies * * * shall be and become the assessed valuation * * * which such lands * * * shall be taxable for all general purposes * * *.

* * * And it shall be the duty of the county * * * assessors and the county board of equalization and appeals * * * in assessing equalizing and adjusting the value of such lands * * * to conform to the provisions of this act.

SECTION 2. It is hereby made the duty of the clerks of the county courts to ascertain * * * the aggregate amount * * * of the portion of * * * benefits assessed * * * against lands * * * within * * * drainage or levee districts * * * in their respective counties and for which * * * no levy * * * for principal has been paid, exclusive of delinquent levies * * * and shall also certify the aggregate amount * * * of then existing benefits * * * for which * * * no levy * * * for principal has been paid, exclusive of delinquent levies * * *, together with any other information that may be necessary or required in order that the provisions of this act may become effective and the equalizing of the valuation of lands * * * within drainage or levee districts * * * for taxation for general purposes may be expedited, and to * * * make out and forward * * * the information above referred to, to the state auditor to be laid before the state board of equalization. It is hereby made the * * * duty of the * * * clerks * * * to retain a copy of the information, matters and things * * * to be laid before and for the use of the county boards of equalization and appeals."

I.

THE PRIMARY DUTY OF BOARDS OF EQUALIZATION TO EFFECT PROVISIONS OF ACT.

The sections of this act as quoted have been deleted so as to make more evident the portions of the act applicable to your inquiry and for the purpose of emphasizing the fact that the foregoing sections lay an initial or primary duty upon the boards of equalization, as well as upon the county assessors, to give full force and effect to the provisions of this enactment. In fact, the wording of the Act itself would be conclusive as to the legislative intent. Not only are the boards of equalization considered along with the assessors in the same phrase of the first section, but under Sec. 2 it is made the duty of the clerk of the county court to obtain full information as to the amount of unpaid levies, exclusive of delinquencies against the land in drainage or levee districts in his county, and requires that the clerk make a copy of all such information and lay it before the county board of equalization. Peculiarly enough, the county clerk is not required to furnish this information to the county assessor. While a duty is laid upon the county assessor in the first section, it is interesting to note that the means by which the result can be accurately and uniformly accomplished are provided for the use and benefit of the county boards of equalization rather than for the use and benefit of the assessor.

II.

GENERAL DUTIES OF ASSESSOR AND COUNTY BOARD OF EQUALIZATION.

The foregoing enactment, which was not effective until July 24, 1933, must be considered as a statute concerning and applying to the duties of the assessor and the boards of equalization. So as to have clearly before us the duties of the assessors and the boards of equalization in the performance of their duties respecting the valuation of property, we direct attention to certain other statutes, portions of which read as follows:

> "Sec. 9792, R. S. 1929. The assessor shall value and assess all property on the assessor's books according to its true value in money at the time of the assessment; * * *. Each tract of land and town lots should be assessed and valued separately. * * * "

Section 9812 R. S. 1929 reads in part as follows:

> "Said board shall have power to hear complaints and to equalize the valuation and assessments upon all real and personal property within the county which is made taxable by law, and, having each taken an oath, to be administered by the clerk, fairly and impartially to equalize the valuation of all the taxable property in such county, shall immediately proceed to equalize the valuation and assessment of all such property, both real and personal, within their counties respectively, so that each tract of land shall be entered on the tax book at its true value; * * *."

III.

SENATE BILL NO. 34 APPLICABLE TO ASSESSMENT FOR 1934 TAXES.

A careful study of Senate Bill No. 34 reveals it to be the legislative direction to the county assessor and the boards of equalization as to the manner in which they shall arrive at the assessed valuation of tracts of land situated in drainage and levee districts. There can be little doubt as to the power of the Legislature to so direct the various state agencies in the performance of their duties. Judge Burgess in the case of Ward v. Board of Equalization, 135 Mo. 309, l.c. 324 has stated:

> "To the state belongs the sovereign power of taxation, and in the exercise of this power it has the right to provide by proper legislation means for arriving at the values of all taxable property, and for assessing and collecting the revenues, subject only to the limitations and restrictions provided for by the constitution, * * *"

This Act, although directed entirely to the method by which the assessors and the boards of equalization shall arrive at the taxable value of such land is still to be classified as a procedural statute and may be considered as similar to Sec. 9813 R. S. 1929 laying down by legislative enactment the order in which

the county boards of equalization shall proceed to equalize the valuations of the property under their jurisdiction to-wit, that they shall first raise all valuations which in their opinion have been under-assessed, and shall, second, lower all valuations which in their opinion have been returned above their true value. There can be little doubt but that the boards of equalization act in a judicial capacity in performing these functions. This was established in the early cases of this state, one of which was that of Railroad Co. v. McGuire, reported at 49 Mo. 482. In this case Judge Wagner stated, l.c. 483:

> "In the case of The St. Louis Mutual Life Ins. Co. v. Charles, 47 Mo. 462, it was held that the action of the assessor and of the board of appeals, or County Court, in the matter of taxation, was judicial; and where it appeared from the tax-list that the assessor had jurisdiction over the property, i.e., that it was liable to be taxed in any form, though irregularly assessed, the collector would not be liable to the tax-payer for the amount collected."

This case and the ruling therein has been frequently and repeatedly cited by our Supreme Court, one of the more recent rulings being in the case of State ex rel. v. Board of Equalization, 256, Mo. 463. In respect to this judicial power or function, Judge Black in the case of Black v. McGonigle, 103 Mo. 192, l.c. 198, stated:

> "In performing these duties the board acts judicially; this has been often held, and the very nature of the duty to be performed makes it a judicial one. St. Louis Mutual Life Ins. Co. v. Charles, 47 Mo. 465; Railroad v. Maguire, 49 Mo. 483; Cooley on Taxation (1 Ed.) 291. The board has jurisdiction over all the lands in the county, and generally in practice its actions will be confined to raising and decreasing the assessed value of particular parcels, so as to bring all the lands in the county to a uniform value. The law, however, clearly contemplates that all property shall be assessed at its true value (sec. 6711), and if, in the opinion of the board, this has not been done, then the assessment may be increased so as to comply with the spirit and intention of the law."

At this point may it be stated that in view of the fact that we conclude Senate Bill No. 34 to be a procedural statute and in view of the consistent ruling that the boards of equalization perform judicial functions, it appears that it is immaterial whether or not the assessment for 1934 taxes is made on the basis of the valuations of property as of June 1, 1933 (almost two months before the effective date of Senate Bill 34) or whether said valuations are to be made as of the date of assessment; Senate Bill 34 being a remedial, procedural statute, there is no presumption that it is not to act retrospectively. There is no presumption that it is not to act upon assessments partially made, or in the process.

Viewing this Act from another angle, we conclude that it is certainly to be classed as a remedial law. It is common knowledge that many thousands of acres of lands in drainage and levee districts have been forfeited because of the inability of the owners to pay the taxes and assessments levied against the land.

It is clear that it was the intention of the Legislature to correct a supposed inequality existing between land in drainage and levee districts and those without such districts. Whether or not such inequality exists in fact is not here discussed., nor do we pass upon the constitutionality of the act. The Act being intended to correct a supposed inequitable condition, the law must be considered remedial. That being the case, we believe the case of Clark v. Railroad, 219 Mo. 524, is applicable. At page 533 we find the following:

> "No person can claim a vested right in any particular mode of procedure for the enforcement or defense of his rights. Where a new statute deals with procedure only, prima facie it applies to all actions - - those which have accrued or are pending, and future actions. What was before a subject of equitable relief may be made triable by jury without affecting vested rights. If before final decision a new law as to procedure is enacted and goes into effect, it must from that time govern and regulate the proceedings."

and at page 534, the following remarks are made:

> "The doctrine thus announced seems wellbedded in principle. We think it applies to the statute in hand, which, in its essence, is purely a remedial one, hence

no presumption lies that it was intended to operate prospectively only. Being highly remedial it should be most liberally construed to further its life in advancing the remedy and striking down the mischief aimed at -- the need and occasion of the law, the mischief felt and the object and remedy in view being cardinal elements in statutory interpretation."

We further refer to the case of McManus v. Park, 287 Mo. 109. The contention of the defendant is found on page 113, where the following is stated:

"The defendant herein asserts that the petition states no cause of action, because it shows that the Act of 1911, providing for annual accounting of a trustee appointed by the circuit court, was passed subsequent to his appointment, and the vesting of the trust estate in him."

The Act of 1911, as you can see by the foregoing extract, required all trustees appointed by the circuit court to make a full accounting and report annually respecting their trust. The court stated, l.c. 115:

"This argument proceeds upon the theory that if it is made to apply to existing trusts and trustees it is retrospective in operation. Appellant cites cases stating the rule of statutory construction that, unless a different intent in the statute is evident, its provisions are to be considered as prospective only and not retrospective. (State ex rel. v. Wright, 251 Mo. 325, l.c. 344, and cases cited.) This, however, applies only to statutes which would affect vested rights, and not to statutes which are remedial only. No one has a vested interest in the form of procedure; * * *"

and held, l.c. 118:

> "The Act of 1911, under the authorities cited, requiring trustees appointed by the court in any trust estate to make an annual report only applies to procedure, is entirely remedial in operation, and affects nobody's existing right."

The court also considered the presumptive rule in respect to retroactive operation of statute, and held the general rule, to-wit, that statutes were presumed to act prospectively only, not to apply to remedial and procedural statutes, l.c. 119:

> "Where a new statute deals with procedure only, prima-facie it applies to all actions --- those which have accrued or are pending, and future actions. . . General words in remedial statutes may be applied to past transactions and pending cases, according to all indications of legislative intent and this may be greatly influenced by considerations of convenience, reasonableness and justice."

It appears that our holding in this instance is consistent with similar rulings in other statutes. In the case of Maine v. Board of Commissioners, 24 N.E. 80, the Supreme Court of Indiana considered this problem as applied to the levy and assessment of land in connection with the purchase of a toll road. It appears that on the 2nd of March, 1884, the proceedings were instituted under the then existing law. Proceedings were not completed until after the 4th of June, 1885; in the meantime, the Act of April 13, 1885 had become effective, changing the procedure in such cases. The following remarks are found in the Court's opinion, l.c. 81:

> "It may be conceded, when one or more sections of a statute are amended in the mode prescribed by the constitution, that the amended sections cease to exist, and the sections as amended are, in effect, incorporated into the original act; but when the new law is a substantial re-enactment of the old, merely changing modes of procedure, but not changing the tribunal or the basis of the right, and

when it takes effect simultaneously with the repeal of the old act, it will be presumed, even without an express saving clause, that the legislature intended that proceedings instituted under the old law should be carried to completion under the new. * * * * * * * * * * * The amendment of April 13, 1885, continues in force the same power in the respective county boards, but makes some changes in the mode of procedure; and, within the principles above enunciated, the jurisdiction of the board over pending proceedings was in no wise affected by the amendment. It was only necessary, in so far as the mode of procedure was changed by the new act, that the proceedings should thereafter conform to that law."

In the case of Railroad Company v. Oglesby et al, 76 N.E. 165, the same court considered the effect of a change in the law pending proceedings for the improvement of a street. We find the following remarks, l.c. 168:

"The method of apportioning and assessing, and also of collecting the costs of such improvements, was changed by the new act.

Appellant insists that the averment of facts in the complaint is insufficient to show that a statutory lien was perfected against its property, because the proceedings were all had in accordance with the provisions of the Barrett law, notwithstanding its repeal, and were not made to conform to the new law after it went into effect. * * * * * * * * * The general rule is that statutes granting authority to levy special assessments against private property must be strictly construed, and the mode of procedure prescribed must be closely followed in all essential details. The new statute required the costs of the improvement to be first apportioned by the city commissioners in proportion to the benefits received; but the assessment sued upon was made by the common council upon the engineer's report, without reference to the city commissioners.

> This was a material and substantial departure from the method prescribed by the law in force at the time the assessment was made, and sufficient to invalidate the lien declared upon in the complaint."

CONCLUSION.

From the foregoing authorities we conclude that Senate Bill No. 34 p. 419 laws of Missouri 1933 is to be given due consideration by the boards of equalization in the equalizing and adjusting 1934 taxes.

Respectfully submitted,

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HGW:SW

APPROVED: ______________________
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