

TAXATION: The lien for taxes imposed on insurance on taxable property by the provisions of Section 11173 is applicable to the City of St. Louis and St. Louis County.

July 17, 1943

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Honorable Lawrence Presley, Counsel
Insurance Department
Jefferson City, Missouri

Dear Mr. Presley:

This is in reply to yours of recent date wherein you submit the following statement and request:

"This Department has frequent inquiries as to whether the lien imposed by Section 11173, Revised Statutes of Missouri, 1939, upon the proceeds of insurance policies for tax liability applies to the City of St. Louis and St. Louis County and also the cities and towns located in St. Louis County. It appears to us that the lien imposed by Section 11173, supra, does not apply in these communities by virtue of Section 11201, R. S. Mo., 1939. The inquiries that have come to us to date are substantially in the following form:

- "1. A fire loss occurs in the City of St. Louis, Missouri, which is covered by a \$1000.00 insurance policy, and the loss exceeds \$500.00. Some State and City taxes are unpaid for the last two years. Do these taxes or any part of them become a lien upon the insurance money due under the policy?
- "2. A fire loss occurs in the County of St. Louis, Missouri, which is covered

by a \$1000.00 insurance policy, and the loss exceeds \$500.00. Some State and City taxes are unpaid for the last two years. Do these taxes or any part of them become a lien upon the insurance money due under the policy?

- "3. A fire loss occurs in Clayton, Missouri, in St. Louis County, which is covered by a \$1000.00 insurance policy, and the loss exceeds \$500.00. Some State and City taxes are unpaid for the last two years. Do these taxes or any part of them become a lien upon the insurance money due under the policy?
- "4. It would appear that under Section 11173 R. S. Mo. 1939, a lien attaches to the insurance money, but it also appears that this lien does not apply in the City of St. Louis and in St. Louis County under and by virtue of Section 11201 R. S. Mo. 1939. Does Section 11201 R. S. Mo. 1939 also repeal the Jones-Munger Law in so far as the cities or towns located in St. Louis County are concerned?"

Section 11201 R. S. Mo., 1939, to which you refer provides as follows:

"All sections or parts of sections in conflict with sections 11183 to 11199, both inclusive, shall be and the same are in so far as they conflict with these said sections or apply to counties and

cities not within a county herein described, hereby repealed, and specifically an act of the Fifty-seventh General Assembly, General Session, as found on pages 425 to 449 inclusive, Laws of Missouri, 1933, and amendments thereto, as they may apply to counties and cities not within a county which now have or may hereafter have a population in excess of 700,000 inhabitants and counties containing not less than 200,000 and not more than 400,000 inhabitants."

This section has been before the court in *Hull v. Bauman*, 131 S. W. 2d 721, and *Roberts v. Benson*, 143 S. W. 2d 1058, wherein its constitutionality was under consideration, but your question was not considered in those cases.

Section 11173 R. S. Mo., 1939, providing for collecting of taxes on property which has been destroyed by making such taxes a lien on the insurance on such property was Section 9965 by the Act of the 57th General Assembly, known as the Jones-Munger Act. This act was amended in 1935, Laws of 1935, page 402, but so far as your question is concerned the amendment did not change the situation.

Said Section 11201, supra, was enacted in 1939, Laws of 1939, page 878. From an examination of the title to this act and the act itself, and considering the purposes of the act it seems that the prime purpose was to take certain cities and counties therein described out from under the provisions of the portion of the Jones-Munger Act relating to procedure for collecting delinquent taxes and restore to them the old system of collecting delinquent taxes by suit. Section 11201 contains some language which might lead one to think that any portion of the Jones-Munger Act and its amendments which applies to cities and counties described in said section is repealed in so far as they ap-

ply to such cities or counties. However, from an examination of the title to the 1939 act which contains Section 11201, supra, it will be seen that the act only amended the Jones-Munger Act and repealed " * * all conflicting acts and parts of acts. * * " Since said Section 11201 is somewhat ambiguous on the question of whether or not it was the intention of the lawmakers to repeal all of the Jones-Munger Act which applied to the cities and counties described therein, or only that portion of the act which was in conflict with the 1939 act, then we can refer to the title of the 1939 act to ascertain its meaning. In *Holder v. Elms Hotel Co.*, 92 S. W. 2d 620, 104 A. L. R. 337, and *Meyer Co. v. Unemployment Compensation Commission*, 152 S. W. 2d 184, the court held that the title to the act may be considered as giving the legislative intention, if provisions contained in the body thereof are expressed in ambiguous language. The title to the 1939 act clearly indicates that it was the intention of the lawmakers to amend the Jones-Munger Act and repeal any portion of it or any other law which is in conflict with the 1939 act.

To give Section 11201, supra, a construction that all of the provisions of the Jones-Munger Act that apply to the cities and counties therein described are repealed would be making the provisions of Section 11201 broader than the title because the title only repeals the portions of the Jones-Munger Act that are in conflict with the 1939 act. Such a construction would make the section in violation of Section 28, Article IV of the Constitution, which requires the subject of the act to be clearly expressed in the title.

In the case of *State ex inf. Major v. Amick*, 152 S. W. 591, the court announced a principle which is applicable here. By this principle repeals by implication are not favored; and, where two statutes cover in whole or in part the same matter, it is the duty of the court to harmonize them, if possible, and so give effect to both as though they constituted one act.

Section 11173, supra, may be classed as a general statute and its provisions can apply with or without the Jones-Munger Act or the 1939 act, supra.

Hon. Lawrence L. Presley

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CONCLUSION

Applying the foregoing provisions and principles it is the opinion of this department that the provisions of Section 11173 R. S. Mo., 1939, providing the manner of collecting taxes on insured property which has been destroyed, applies to all cities and counties in this state.

Respectfully submitted,

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