

FIRE DISTRICTS: A railroad company is not required in the annual
RAILROADS: statements required by Section 151.020 to specify
TAX COMMISSION: the amount of mileage of track within a fire district,
and the failure of a railroad company to so specify
will not give the Tax Commission power under Section
151.070 to make further assessment, adjustment or
equalization of the railroad property, since nothing has been omitted.
The State Tax Commission has no legal right to compel a railroad company
under Section 151.080 to report its mileage within a fire district.
The State Tax Commission cannot make an arbitrary assessment under
Section 151.050 for failure of a railroad company to specify the amount
of mileage of track within a fire district. The State Tax Commission
does not have the power to apportion railroad company mileage to a fire
district under Section 138.380; because apportionment of taxes is made
under Section 151.080. It must be done in the manner therein provided.

December 14, 1953

Honorable Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri

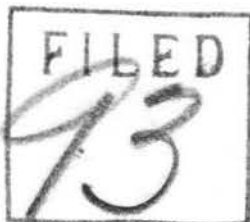
Dear Mr. Wallach:

Your office, by letter dated November 10, 1953, requested
an official opinion of this department as follows:

"(1) If a railroad company furnishes
its annual statement to the State Tax
Commission under provisions of Sec.
151.020 R.S.Mo. 1949, showing the length
of road, etc. in the County and in in-
corporated cities, towns and villages,
but does not show its mileage within Fire
Protection Districts incorporated pursuant
to the provisions of Chapter 321 R.S. Mo.
1949, so that the Commission cannot ap-
portion to the Fire Districts under pro-
visions of Section 151.080, has property
been omitted which can be assessed for
years prior to 1953 under the provisions
of Section 151.070?

"(2) Has the State Tax Commission a legal
right to compel a railroad company to furnish
information relating to mileage within a
Fire District for the purpose of assessment
under Section 151.080?

"(3) If a railroad company fails or refuses
to furnish its mileage in the Fire Districts,
can the State Tax Commission make an arbitrary
assessment under provisions of Section 151.050?



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"(4) Has the State Tax Commission power to apportion railroad company mileage to the fire districts at any time during the year under the provisions of Section 138.380?"

Statutory citations herein are all RSMo 1949, except as otherwise noted.

Section 151.010 makes railroads taxable within this state and provides that the manner of taxation is as follows:

"All railroads now constructed, in course of construction, or which shall hereafter be constructed in this state, and all real property, tangible personal property, and intangible personal property, owned, hired or leased by any railroad company or corporation in this state, shall be subject to taxation, and taxes levied on real property, and tangible personal property, shall be levied in the manner herein set forth, and the taxes on intangible personal property shall be levied and collected in the manner otherwise provided by law."

Section 151.020 requires railroad companies to make an annual statement to the State Tax Commission as follows:

"1. On or before the first day of May in each and every year, the president or any authorized officer of every railroad company whose road is now or which shall hereafter become so far completed and in operation as to run locomotive engines, with freight or passenger cars thereon, shall furnish to the state tax commission a statement, duly subscribed and sworn to by said president or other authorized officer, before some officer authorized to administer oaths, setting out in detail the total length of their road so far as completed, including branch or leased roads, the entire length in this state, and the length of double or sidetracks, with depots, water tanks and turntables, the length of such road, double or sidetracks in each county, municipal township, incorporated city, town or village through or in which it is located in this state;

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the total number of engines and cars of every kind and description, including all palace or sleeping cars, passenger and freight cars, and all other movable property owned, used or leased by them on the first day of January in each year, and the actual cash value thereof.

"2. In case the report, from any railroad, required by this section, is not received by May first of the year in which it is due the state tax commission may, at its discretion, increase by four per cent the total assessed valuation of the railroad company and certify such increase to the director of revenue for collection."

The above section requires the report of certain taxable property such as tracks in "each county, municipal township, incorporated city, town or village". To determine whether a railroad company must specify in its annual report the amount of mileage in each fire district, we must determine whether a fire district is one of the governmental subdivisions mentioned in the quotes above. Obviously, a fire district is not a county, incorporated city, town or village. Therefore, if it comes within the purview of Section 151.020 it must be under "municipal township". The Supreme Court of Missouri in State ex rel. Halferty vs. Kansas City Power and Light Company 346 Mo. 1069, 145 S.W. 2d 116, in construing the meaning of "municipal township" under the provisions of this chapter determine that a water district was not a municipal township, and gave this definition of what a "municipal township" under this chapter, means, l.c. 122:

"* * * But does that mean that it is a municipal township as that term is used in the taxing statutes? A municipal township may be, for some purposes and in a broad sense, a 'municipal corporation' --(we suggest this thought without deciding the question)--but, even if so, is a 'municipal corporation' necessarily a 'municipal township?' It is to be borne in mind that taxing statutes are construed strictly in favor of the taxpayer, bearing in mind that they should be applied with due regard to the apparent intention of the Legislature as expressed in the statute, with a view to promoting the apparent object of the legislative enactment. It will be noted that in all of the taxing provisions we have noted the words 'municipal townships' have been

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used. Nowhere are the words 'municipal corporations' used. Appellant says 'municipal township' is not defined by our statutes. We think its meaning, as used in the statutes we have quoted, is well understood and is clearly enough indicated as a subdivision of a county. Illustrative, we refer to Chap. 86, R.S. 1929, Mo. St. Ann. Sec. 12251 et seq., p. 8119 et seq., relating to 'Township Organization.' Sec. 12251, the first section of that chapter, provides for the holding of an election in any county for or against township organizations. Subsequent sections provide for the organization, government and powers of the townships if township organization is voted. By Sec. 12259 provision is made for 'the county court of each county' to alter the boundaries of townships and to increase or diminish their number, in the manner there provided. From these and other references in the statutes that might be made we think it too clear to admit of argument that when the Legislature used the term 'municipal townships' in the statutes above referred to it meant subdivisions of a county as that term is generally understood." (Emphasis theirs).

Therefore, since a fire district is not a county, municipal township, incorporated city, town or village, a railroad company need not specify the amount of track in a fire district. Nor is such information required by Section 151.080, infra, page 6. Provision is made for assessment by the Tax Commission of property omitted in prior years by Section 151.070, RSMo 1949.

"The state tax commission shall have the power to assess, adjust and equalize the property herein specified of any railroad company, in whole or in part, for any year or years since January 1, 1935, which has been or which may hereafter be omitted from assessment, adjustment and equalization, and to reassess, adjust and equalize any such railroad property, in whole or in part, as the case may be, for any year or years for which it may have been heretofore or in which it may hereafter be assessed, adjusted and equalized, but which assessment, adjustment and equalization, for any cause has been or which may hereafter be held by the courts to be irregular or void."

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The above section provides for the assessment, adjustment and equalization of property which has been omitted from assessment, adjustment, and equalization in prior years. If the railroad company has included the total mileage of their track and other property assessed under Section 151.020, property has not been omitted within the meaning of Section 151.070. Therefore, there can be no assessment for prior years under this section. It must be understood that if mileage has not been specified for a fire district, it nevertheless, would have been included within the mileage within each county. Therefore, there would not be an omission. The answer to your question number one is, no.

There appears no statutory authority requiring the report by railroad companies of the amount of mileage within a fire district, and in the absence of such requirement by statute there is no way by which the State Tax Commission can compel the giving of such information. It must be noted that Section 151.080 does not provide a different method for assessment of property for the purpose of taxation, but merely provides for the apportionment of the aggregate value of property as between the governmental subdivision mentioned in Section 151.080; Cumulative Supplement, 1951:

"Said commission shall apportion the aggregate value of all property herein specified belonging to or under the control of each railroad company, to each county, municipal township, city or incorporated town, special road districts, library districts, school districts which levy taxes for library purposes pursuant to section 137.030 RSMo 1949, public water supply, fire protection and sewer districts or subdivision, except other school districts, in which such road is located, according to the ratio which the number of miles of such road completed in such county, municipal township, city or incorporated town, special road district, library districts, school districts which levy taxes for library purposes pursuant to section 137.030 RSMo 1949, public water supply, fire protection and sewer districts or subdivision, except other school districts, in which such road is located shall bear to the whole length of such road in this state; provided, that in any case where a company whose line or road is liable to taxation shall have been or

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may become consolidated into another corporation, entitled by its charter or otherwise to exemption from county or other taxation, that portion of the road which is liable to taxation, as aforesaid, shall be assessed separately, and the value thereof apportioned to the counties, municipal townships, cities or incorporated towns, special road districts, library districts, school districts which levy taxes for library purposes pursuant to section 137.030 RSMo 1949, public water supply, fire protection and sewer districts or subdivision, except other school district, in which it is located; and the president or any authorized officer of each such railroad company shall in the annual statements rendered to the commission, as provided in section 151.020, include statement of the length of the road within school districts which levy taxes for library purposes pursuant to section 137.030 RSMo 1949 and library districts; provided, further that in no event shall any school district levy school taxes, taxes for the erection of public buildings, or for other purposes except library purposes on the property herein specified, in any manner other than that provided for in section 151.150."

If railroad companies will not voluntarily specify what mileage of track is within a fire district, the State Tax Commission may ascertain such, among other methods, through their agents, appointed by authority of Section 138.290, et seq. Therefore the answer to your question number two is, no.

Section 151.050 gives the State Tax Commission power to ascertain the value of the property of railroad companies in case such railroad companies fail to make the required reports to the State Tax Commission.

"Should any railroad company fail to make and return to the state tax commission and county clerks any of the statements required by the foregoing provisions of this chapter, the said commission shall ascertain the property of such company, from the best information they can obtain, and shall fix the value thereof; and their action on the same shall be filed in the office of the state tax commission as herein required."

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Since, however, it has been determined that there is no obligation on the part of railroad companies to specify the amount of mileage of track in a fire district there has been no failure on the part of the railroad company to make the required statements to the State Tax Commission. Therefore, Section 151.050 would not be applicable and there could be no assessment under the provisions of that section. The answer to your question number three is, no.

In answer to your question number four as to whether the State Tax Commission has the power to apportion railroad company mileage to the fire districts at any time during the year under Section 138.380, we point out that that section does not deal with the apportionment of the aggregate value of the railroad company property between the various governmental subdivisions who are entitled to taxation therefrom, but deals merely with the assessment, equalization and adjustment of the property of the railroad company. The section has no connection at all with the apportionment of the mileage to a fire district; such apportionment would be under Section 151.080. Section 138.380 is quoted herewith:

"It shall be the duty of the state tax commission, and the commissioners shall have authority to perform all duties enumerated in this section and such other duties as may be provided by law:

"(1) To raise or lower the assessed valuation of any real or tangible personal property, including the power to raise or lower the assessed valuation of the real or tangible personal property of any individual, copartnership, company, association or corporation; provided, that before any such assessment is so raised, notice of the intention of the commission to raise such assessed valuation and of the time and place at which a hearing thereon will be held, shall be given to such individual, copartnership, company, association or corporation as provided in sections 138.460 and 138.470;

"(2) To require from any officer in this state, on forms prescribed by the commission, such annual or other reports as shall enable said commission to ascertain the assessed and equalized value of all real and tangible property listed for taxation, the amount of taxes assessed, collected and returned, and

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such other matter as the commission may require, to the end that it may have complete information concerning the entire subject of revenue and taxation and all matters and things incidental thereto;

"(3) To cause to be placed upon the assessment rolls at any time during the year omitted property which may be discovered to have, for any reason escaped assessment and taxation, and to correct any errors that may be found on the assessment rolls and to cause the proper entry to be made thereon.

"(4) To investigate the tax laws of other states and countries, to formulate and submit to the legislature such recommendations as the commission may deem expedient to prevent evasions of the assessment and taxing laws, whether the tax is specific or general, to secure just, equal and uniform taxes, and improve the system of assessment and taxation in this state;

"(5) To prescribe the form of all blanks and books that are used in the assessment and collection of the general property tax, except as otherwise provided by law."

CONCLUSION

It is therefore, the opinion of this office that a railroad company is not required in the annual statements required by Section 151.020 and Section 151.080 to specify the amount of mileage of track within a fire district, and that the failure of a railroad company to so specify will not give the Tax Commission power under Section 151.070 to make further assessment, adjustment or equalization of the railroad property, since nothing has been omitted. The State Tax Commission has no legal right to compel a railroad company under Section 151.080 to report its mileage within a fire district, but may ascertain such mileage in any legal manner. The State Tax Commission cannot make an arbitrary assessment under Section 151.050 for failure of a railroad company to specify the amount of mileage

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of track within a fire district. The State Tax Commission does not have the power to apportion railroad company mileage to a fire district under Section 138.380 because such apportionment is made under Section 151.080. It must be done in the manner therein provided.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

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