TAXATION: Past due bonds and coupons of drainage and levy distri... may be used to pay tax imposed for purpose of paying such bonds and coupons. Section 9911 R. S. Mo. 1929.

June 9, 1934. 6-11

FILED
100

Hon. Charles Young
County Treasurer
Livingston County
Avalon, Missouri

Dear Mr. Young:

We are in receipt of a request forwarded through Col. Scott J. Miller of your city upon the following matter:

> "• • •We have a drainage district under the amendment of 1929 authorizing the payment of the taxes and assessments due levied for the purpose of paying bonds issued; bonds having been sold in 1922 previous to this amendment, raising the question whether under the Constitution the amendment of the statute was in violation of the Constitution. Now this is the situation: I have a vast amount of land in the drainage district and owe back taxes and delinquent assessments. I hold bonds sufficient to pay these taxes. The question of the violation of the Constitution of this amendment does not appear apparently in my case. I want to pay my taxes with these bonds and default coupons thereon. Can I compel the County Treasurer to accept these bonds and coupons in payment of the taxes and assessments levied against my land to pay these bonds? Being the holder of the bonds I, of course, waive the constitutional right by presenting them for payment."

Section 9911 R. S. Mo. 1929, authorizes the collectors to receive certain warrants of the state, county, city or municipal subdivision in payment of certain taxes, fines, penalties and obligations. This statute in some form or other has been on our books for many many years and in fact predates our present constitution by approximately forty years. Although it has been changed in some respects, the intent and purpose has remained the same as it was as indicated by Section 3205 R. S. Mo. 1835. Not until the adoption of our present

constitution were any restrictions imposed upon the power to tax for valid existing indebtedness. With the adoption of Sections 11 and 12 of Article X of the Constitution, providing that no county should become indebted in an amount exceeding the anticipated revenue for that year without a two thirds vote of the voters assenting to such increased obligation, it became necessary to amend the then existing law so as to definitely state that no warrant would be received in payment of any tax unless issued during the year for which the tax was levied. With the organization of the drainage and levy districts, it became evident that there was no good reason why the warrants of such districts should not be accepted in payment of assessments for the support of such districts. Similarly as the law provided

> "past due bonds or due bonds of any county, city, township or any school shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue but not in payment of any tax levied for any other purpose;"

it was reasonable and logical that the law be amended so as to bring drainage and levy district bonds within the provisions of this Section. This was done in 1929.

The right of the legislature to pass such an enactment as is found in Section 9911 has been long recognized by the judiciary of this State. One of the early cases is that of Logan vs. County Court of Barton County, 63 Mo. 336. In that case the Collector had accepted in payment of taxes warrants issued more than ten years before. In holding that the Collector had acted properly in receiving these warrants in payment of taxes the Court stated:

> "* * *The county treasurer is required to receive this warrant from the collector, provided that the collector satisfies the treasurer in a mode prescribed that he received it in payment of county taxes.
>
> There is no suggestion that any of the formalities required were wanting in this case. The county court rejected the credit claimed, simply and solely on the ground that the warrants were issued more than ten years before the collector received them.
>
> The collector and treasurer are agents of the county. Their agency is regulated by law, and in this case <u>there is no dispute that they strictly complied with the law.</u>* * * * *"

The Federal Courts have likewise recognized this Section and its application to taxes collected for a specific purpose. In the case of United States ex rel. vs. Macon County Court, 45 Fed. 400, the statement of facts reflects this situation, l. c. 401:

> "* * *By virtue of other provisions of the laws of the state, county warrants cannot be assigned merely by a blank indorsement, but must be indorsed in full. It is also the law that county warrants may be received in payment of taxes levied for county purposes, and county collectors are specially enjoined to receive them in payment of such assessments.* * * *
>
> The relators allege, in substance, that during the year 1889 the county court of Macon county drew a large number of small warrants, ranging in size from $1 to $40, on the special Missouri & Mississippi railroad fund, in payment of coupons on Missouri & Mississippi Railroad bonds, which were presented to the court for allowance and payment during the year; that these warrants were duly presented to the county treasurer for payment, and the date of presentation noted thereon; and that thereafter divers and sundry tax-payers made use of the same to pay their county taxes, including therein taxes belonging to the special Missouri & Mississippi Railroad fund, on which the relators claim to have a prior lien by reason of the presentation of their warrants in September, 1879, as before stated.* * *"

One position taken in this case was that the taxpayers were without authority to pay a special levy with county warrants. The Court held the contention without merit and stated, l. c. 404:

> "* * *In the first place, it is said that they had no right to receive county warrants in payment of the special Missouri & Mississippi Railroad tax of one-twentieth of one per cent., and that their action in this respect was unlawful. This claim, however, is not made with much apparent confidence, and in my judgment there is no ground upon which it can be sustained. The fact is that county warrants have been receivable for county taxes for more than 25 years. Gen. St. Mo. 1865, c. 38 46, p. 232. Such was the law when relator's bonds

> were issued, and the statute is very general in its terms. County warrants are made receivable in discharge of 'any county or city revenue, license, tax, assessment, fine, penalty, or forfeiture.' Language could hardly be made more comprehensive.* * * **

The Supreme Court of the United States affirmed the decision of the Court in this case, that decision being found at 134 U. S. 332.

The further case of State ex rel. George W. Harshman, vs. John Winterbottom, 123 U. S. 215, the Supreme Court of the United States held, l. c. 221:

> ** * *This formal accounting and settlement between the county court and the defendant Winterbottom, as set out by the plaintiff himself in his own declaration, is one which the county court undoubtedly had a right to make; and, in paying over these county warrants to the treasury of the county, and in receiving the acknowledgment of the county court that he was fully discharged from his obligations in that respect, he presents a defense to this action which nothing in the declaration removes or invalidates. He had a right to receive county warrants in payment of taxes. The law in express terms declares it to be his duty to receive them. Whether they were received by him under the exact circumstances which the law directs, as to original ownership or assignment to the party who presented them, were matters for which he might have been called to account by the county court, and that body, in making the settlement with him, might possibly have had the power to reject warrants so received in making up the account; but, inasmuch, as they were actual obligations of the county, payable out of the county funds, and receivable in discharge of taxes if properly tendered, the county court, which, by law, has full charge of all the financial operations of the county, could waive any such irregularity in the time and mode of presenting their own obligations, and credit the Collector with them in the account.* * * **

In spite of this judicial approval of the law as applied to county warrants, we recognize that the Courts have criticized this Section as applied to drainage and levy district warrants. Unquestionably an inequality might exist in an application of this law to such warrants. As stated in State ex rel. vs. Bates, 235 Mo. 262, l. c. 296:

> "* * *That provision of the levee laws making warrants of the district receivable on levee taxes the same as county warrants are receivable for county taxes, sections 8367 and 8365, Revised Statutes 1899 (secs. 5710 and 5711, R. S. 1909), is incapable of full enforcement. The law making county warrants receivable for county taxes (Sec. 3800, R. S. 1909) provides that county warrants can only be received for taxes of the year during which such warrants are drawn; and this works out satisfactorily, because county warrants cannot be legally issued in excess of the county revenue for each year. However, no such rule applies to the issue of warrants for building levees and excavating ditches. When once a levee or ditch is begun, it must, to become effective, be completed with all convenient speed; and this will often result in the issue in one year of enough, or more than enough warrants, to consume the tax levies of four years. This gives parties who own lands in the district an opportunity to collect their warrants promptly, by using such warrants in payment of their taxes; but leaves other warrant-holders who do not own such taxes to wait an unreasonable time for their money.
> * * * * * *
>
> Difficulties such as confront the relator and the levee district in this case are likely to continue to arise until the Legislature repeals or modifies that section of the law which makes levee taxes payable in warrants." * * * *

Although the application of this law resulted in embarrassment to the drainage district and difficulty for the contractor in the Bates case supra, yet the Court fully recognized the power of the Legislature to pass such a law.

In the instant case, however, this law would not necessarily result in any embarrassment or difficulty for the drainage district for it is to be noted that the statute provides that only "past due" bonds or coupons may be used to pay the levy or drainage tax "levied for the payment of bonds or coupons of the same issue."

We shall now turn to the question presented by the inquiry, to-wit;- that the bonds in question were issued prior to the 1929 amendment which authorizes their use in the payment of taxes levied to pay interest on lands of this same issue. As has been said in many of the cases dealing with this statutory provision, it is but a legislative admission of the right to set off. It is a declaration of the right of the taxpayer to satisfy the tax claim of the district with his claim against the district represented by the bonds and interest coupons. The logic of the Macon County case, supra, in dealing with another point raised in that case, is applicable to your proposition. It was contended in that case that the law of 1873, permitting more than one county warrant to be issued if the claim exceeded $25.00, impaired the remedy in force when the relators' debt was contracted, and that the action of the county collector in accepting warrants issued under this law of 1873 in payment of taxes was illegal. The Court held this position untenable and stated l. c. 404:

> "The act of 1873 did not attempt to alter the obligations of the county in any of its outstanding contracts or to change the remedy for their enforcement. It facilitated to some extent the use of county warrants in paying county taxes and this is all that can be alleged against it."

In the instant case the application of the amendment of 1929 to bonds or coupons then outstanding does not in any way change the obligation of the drainage districts on account of such bonds or other contracts, nor does it change or impair any remedy then existing for the collection or enforcement of such bonds or coupons. No vested right has been altered or impaired and no constitutional provision impinged by the operation of the law in the instant case.

It is therefore the opinion of this office that past due bonds or coupons of levy or drainage districts may be used by the holders thereof to pay taxes or assessments which are levied by the drainage or levy district for the purpose of paying bonds or coupons of the same series.

Respectfully submitted,

HARRY G. WALTNER Jr.
Assistant Attorney General.

Approved _____
ROY McKITTRICK,
Attorney General.