

TAXES - Duty of receiver to pay taxes;  
RECEIVERS - Duty to pay taxes.

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September 2, 1938

Honorable William E. Stewart  
Prosecuting Attorney  
Knox County,  
Edina, Missouri



Dear Sir:

We have your request of August 31, 1938  
for an opinion, which request is in part as follows:

"On August 30, 1938, the Shelby County  
Northwestern Railway Company was sold  
at Shelbyville by trustee in receiver-  
ship. This railway extends into Knox  
County and Mr M. M. Brees, Collector  
of this County, and myself were present  
at the sale in interest of Knox County  
as to taxes. The road was purchased for  
\$43,900.00, more than enough to pay ex-  
penses and taxes to Knox and Shelby county.  
It is now necessary for Knox County to  
file an application for a preference  
and in discussing this matter with Judge  
Harry Libby of the Shelby Circuit Court  
and the attorneys for the trustee the  
question came up as to taxes for 1939.

"The railway was assessed on June 1st  
for the 1939 taxes and Judge Libby requested  
me to write you for an opinion on that.  
The railway, of course, will be wrecked  
and sold for junk and will not be in ex-  
istence in the year 1939. The question  
is, can Knox and Shelby Counties claim  
taxes for the year 1939, which assess-  
ment has already been made?"

I.

DATE OF TAX LIEN.

The lien for taxes in this state attaches as of  
June 1st annually. We are enclosing copies of opinions of

this department dated June 19, 1935, to Honorable William H. Tandy, Title Attorney, U. S. Department of Agriculture, written by Mr. Wm. Orr Sawyers, and opinion dated February 14, 1938 written to Honorable A. W. Landis by Mr. Drake Watson.

## II.

### LIABILITY OF RECEIVER FOR TAXES.

It must be remembered that at common law, the crown possessed the prerogative granting it the privilege of having its debts paid in preference to other creditors. Missouri, among many states, has adopted generally the common law and equity practice of England, which was in force at the time the Anglo-Saxon courts were first established in this country.

Generally, state taxes are entitled to a preference, although the property is in the hands of a receiver. *Windsor vs. Pilgrim Shoe Machinery Co.* (1919) 105 Atl. 397 (R.I.); *Booth vs. State* (1908) 63 S. E. 502 (Ga.).

There is no difference between the state and the Federal rule. Receivers in the Federal court are likewise required to pay state taxes. *Shipe vs. Consumers' Service Company.* 28 Fed. 53; *Bright vs. State of Arkansas*, 249 Fed. 950.

The rule in Missouri is in conformity with the above line of decisions. *Greeley vs. The Provident Savings Bank.* The doctrine of the *Greeley* case, *supra*, is approved in *State ex rel. vs. Trust Company*, 209 Mo. 472, l.c. 490.

It is, therefore, the opinion of this office that it is the duty of the receiver to pay all taxes which have been assessed against the railway company in receivership. This applies to the taxes assessed as of June 1, 1938 and payable in 1939.

## III.

### PROCEDURE FOR COLLECTION.

Where property subject to taxes is under the control of a court in a receivership proceeding, the ordi-

nary statutory remedies for the enforcement of taxes levied on the property are suspended. It is the duty of a receiver to ask for an order of court to pay the taxes. If they are not paid, it is the duty of the taxing authority to take the initiative and make proper application to the court for the payment of taxes. *Blakistone vs. State*, 83 Atl. 151.

In *Greeley vs. the Provident Savings Bank*, 98 Mo. 458, l.c. 460, the Supreme Court said:

"The ordinary revenue officers of the state being deprived of the ordinary means of securing the state's revenue from the fund in the custody of the court, the duty devolved upon the court to be satisfied, and upon the receiver to see, that the taxes due the state were paid before the estate was distributed to other creditors and we can conceive of no scheme of administration that the court could properly adopt by which the state's demand could be reduced to the level of an ordinary debt, and be cut off unless presented to the court for allowance within a given time."

It is, therefore, the opinion of this office that the receiver should pay the taxes upon an order, properly applied for, by the appointing court. If the receiver fails to do this, then the revenue collecting authorities could file a motion in the court of the receiver, asking for an order directing the receiver to pay the taxes.

Respectfully submitted

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APPROVED:

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(Acting) Attorney General