

TAXATION:  
DRAINAGE DISTRICTS:

Lands purchased by drainage districts for the purpose of protecting drainage tax lien are exempt from assessment and sale for general taxes accruing subsequent to its acquisition by the drainage district.

---

February 13, 1939



Mr. Charles T. Bloodworth, Jr.  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion from this department which is as follows:

"The Inter-river Drainage District of Butler County, Missouri, is requesting the County Assessor of this county to not assess Inter-river Drainage District lands held by them in this county. Mr. King has asked me to request an opinion from you as to the legality of the proposal of the Inter-river Drainage District.

"The said District has also approached the county court, regarding exemption of their lands from general state and county taxes, apparently, basing their contention on the case of Grand River Drainage District of Cass and Bates County, vs. Reid, 111 S. W. 2nd. 151.

"I have advised the county court to refuse to make the exemption. I would appreciate your opinion regarding that action also."

February 13, 1939

In your letter of the 10th which was in reply to ours of the 6th relating to your request, you stated that the Inter-River Drainage District case is similar to the Grand River Drainage District case referred to in the case of Grand River Drainage District of Cass County v. Reid, 111 S. W. (2d) 151.

In our research on your question, we find that the Inter-River Drainage District of Butler County was formed pursuant to the provisions of chapter 63, Article I, R. S. Missouri, 1929, provided for the organization of Drainage District by Circuit Courts. It was organized under the same law by which the Grand River Drainage District of Cass and Bates Counties was formed; to which district we will refer later in this opinion.

Since the question which you have submitted is identical with the subject of the suit in the case of Grand River Drainage District of Cass and Bates Counties, 111 S. W. (2d) 151, we will refer to that opinion for the answer to your request.

We will assume that the district has come into possession of the lands sought to be taxed by virtue of the provisions of Section 10766, R. S. Missouri, 1929, which is as follows:

"To protect said lien of said drainage taxes upon the lands and other property against which said taxes shall be levied, in any case where delinquent lands are offered for sale for such delinquent taxes, and the amount of the tax due, together with interest, cost, and penalties is not bid for the same, the board of supervisors shall have authority to bid or cause to be bid, not to exceed the whole amount due thereon, as aforesaid, in the name of the drainage district, and in case such bid is the highest bid, the sheriff shall sell and convey such lands to such drainage district, and

February 13, 1939

such lands shall thereupon become the property of the drainage district, and may be held, disposed of, and conveyed by the board of supervisors at such price and on such terms, as in the discretion of the board of supervisors may be to the best interest of the district. If such lands, or other property, are sold by the board of supervisors the purchasers thereof shall take the same subject to all said drainage taxes thereafter becoming due, the same as all other lands and other property in the district. The board of supervisors shall also have authority to protect the lien of the drainage district for drainage taxes by paying the general, state, county, school and road taxes, and in case the lien of the state for such general, state, county, school and road taxes is foreclosed, and the land, or other property, sold for such general taxes, and the said drainage district is not made a party to the proceedings foreclosing the said lien for such general taxes, the said board of supervisors shall be authorized at any time within one year after said sale to redeem such lands, by paying not to exceed the whole amount of such taxes, together with penalties and costs accrued thereon."

The Grand River Drainage District case holds that a drainage district, such as your district, is a municipal corporation.

Section 6 of Article X of the Constitution of Missouri, exempts from taxation properties of municipal corporations.

The courts, however, hold that such properties may not be exempted if they are used by the municipality in a

February 13, 1939

proprietary manner. The contention in the Grand River Drainage District case, supra, was that the district was holding and using lands which it had purchased to protect its lien in a proprietary and not a governmental capacity.

At l.c. 153 of the Grand River Drainage District case the court said:

"The instant case was presented under stipulated facts to the effect that after acquiring the lands involved appellant desired to sell the same to satisfy its drainage taxes; that, although it endeavored so to do, it has been unable to obtain a fair price therefor and is holding said lands to protect its lien for drainage taxes. The record presents no fact reflecting or tending to reflect on the bona fides of appellant's acquisition or retention of the lands in controversy for the protection of its lien for drainage taxes. Appellant is holding the lands until it is practical to dispose of them. Its lease of the lands for agricultural purposes and the application of the rentals, pending a sale, to the discharge of its expenses and bonded indebtedness is a husbanding of its resources for the promotion of its governmental and public functions. Rentals derived therefrom are incidental to the primary object and within the spirit of the statute authorizing the protection of its lien for drainage taxes. Such rentals and any proceeds from sales of the lands will stand in lieu of the taxes. The conduct of a commercial enterprise for profit or speculation in land values is not established by the record. Drainage districts are of statutory origin, possessing only such power as is expressly delegated or necessarily implied from

February 13, 1939

those granted. So long as they proceed in conformity with the expressed or implied authority conferred, we perceive no reason why they may not successfully invoke the protection of section 6, art. 10 of our Constitution. \* \* \* \* \*

CONCLUSION

By virtue of the foregoing statutes and the ruling in the Grand River Drainage District case, supra, if the Inter-River Drainage District of Bates County has purchased lands for the purpose protecting drainage district tax liens and is now holding said lands for the purpose of satisfying said liens only, then such district may invoke the provisions of section 6, Article X of the Constitution of Missouri and be exempted from having said lands assessed and sold for general taxes while it owns them for the purposes aforesaid.

We are further of the opinion that while a district owns these lands it may lease them or rent them for any purpose, applying the rentals pending the sale to the expenses and to the discharge of the bonded indebtedness of the district.

This rule, however, only applies to taxes which are assessable after the district becomes possessed of the lands.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

---

J. W. BUFFINGTON  
(Acting) Attorney General

TWE:DA