

BOND ISSUES: Uncertified assessments can not be used in ascertaining value of property within political subdivisions.

May 8, 1941

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Attention: John L. Graves

Dear Mr. Smith:

Under date of April 25, 1941, your office, by John L. Graves, bond attorney, wrote this office asking for an opinion on the following question:

"An Injunction proceedings has been filed in the Circuit Court of Cole County, Missouri, against the State Board of Equalization and the State Tax Commission jointly, which injunction proceedings questions the assessment of the properties of the Western Union Telegraph Company, Postal Telegraph Company, Southwestern Bell Telephone Company and the American Telephone and Telegraph Company and enjoins the State Board of Equalization and Tax Commission from certifying to the various counties of the State, a certification of the assessment.

"Under Section 12 Article 10 of the Constitution of Missouri, relating to the limit of municipal indebtedness, it is provided that the basis of determining bonded indebtedness shall be extended on the value of taxable property to be ascertained by the assessment next

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before the last assessment for State and County purposes previous to the incurring of such indebtedness. In view of the pending injunction proceedings the simple legal question is whether or not the completed assessment as of June 1, 1937, which became a final assessment when the Board of Equalization adjourned sine die December 31, 1938, is the controlling assessment and whether or not the assessment as of June 1, 1938, which was a completed assessment on December 31, 1939. It is the assessment of June 1, 1939, which is questioned by the injunctive proceedings."

and enclosing copy of a letter written by the Honorable Robert B. Fizzell of the law firm of Bowersock, Fizzell and Rhodes, to your office pertaining to the same question.

The legal proposition, as we understand it from the letter of Mr. Graves, upon which you wish an opinion is this: 'Can the assessment for the year 1939 be treated as a completed assessment for the purpose of ascertaining the value of property within political subdivisions of the state when considering the legality of a bond issue, during the pendency of this suit, enjoining the State Tax Commission and the State Board of Equalization from certifying to the various counties the result of the assessment and equalization of values of the property of Telephone and Telegraph Companies for the year 1939.'

In writing this opinion, for the purpose of clarity, and the further reason that it may be read by persons not familiar with the constitutional and statutory provisions, we will set out herein certain portions of the Constitution and the Statutes with which your office is thoroughly familiar.

The portion of Section 12, Article X of the Constitution, pertinent to the question, is as follows:

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"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness, except that cities having a population of seventy-five thousand inhabitants or more may, with the assent of two-thirds of the voters thereof voting on such proposition at an election to be held for that purpose, incur an indebtedness not exceeding ten per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring of such indebtedness; * * * * *

The words 'last assessment' used in the above quoted portion of Section 12 of Article X of the Constitution have been held by our Supreme Court to mean 'last completed assessment', that is, an assessment which has passed through all the state agencies which have to do with property assessments. State ex rel. Dexter v. Gordon, 251 Mo. 303, Steinbrenner v. City of St. Joseph, 285 Mo. 318, State ex rel. Carthage v. Hackman, 287 Mo. 184, State ex rel. Jamison v. St. L.S.F. Railway Co., 318 Mo. 285, State ex rel. Lane v. St. L.S.F. Railway Co., 338 Mo. 852.

The assessment and equalization of the value of property of the telephone and telegraph corporations is provided for in Section 11295, Article 16, Chapter 74, Revised Statutes of Missouri, 1939, which section is herein set out, as follows:

"All bridges over streams dividing this state from any other stated owned, controlled, managed or leased by any person, corporation, railroad company or joint stock company, and all bridges across or over navigable streams within this state, where the charge is made for crossing the same, which are now constructed, which are in the course of construction, or which shall hereafter be constructed, and all property, real and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, interstate bus and truck lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county courts, and the county and state boards of equalization are hereby required to perform the same duties and are given the same powers in assessing, equalizing and adjusting the taxes on the property set forth in this section as the said courts and boards of equalization have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes on railroad property; and the president or other chief officer of any such bridge, telegraph, telephone, electric power and light companies, electric transmission

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lines, oil pipe lines, gas pipe lines, gasoline pipe lines, interstate bus and truck lines, or express company or the owner of any such toll bridge, is hereby required to render statements of the property of such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, interstate bus and truck lines, or express companies in like manner as the president, or other chief officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property."

It will be noted that this section requires the filing, by the President or Chief Officer of telephone and telegraph companies, of a statement of the property owned by the companies in the same manner that property statements are filed on behalf of the railroad Companies and that the manner of assessing, adjusting and equalizing the value of such property is the same as applied to the value of the railroad companies.

The law in regard to the assessment and equalization of the value of property of railroad companies is set out in Article 14, Chapter 71, Revised Statutes of Missouri, 1939. The sections of the statutes in this article and chapter, which we consider pertinent to your question, are Section 11243, which requires the president or chief officer of each company to file property statement; Section 11247, prescribing certain duties of the State Auditor in connection with such property statements; Section 11248, which directs the action of the State Board of Equalization in connection with such property statements; Section 11254, requiring the State Board of Equalization to keep a record of its action and directing the Board in connection with the record, and Section 11255, directing the certification and publication of the completed record by the State Auditor. All of these sections are herein set out, as follows:

Section 11243:

"On or before the first day of January in each and every year, the president or other chief 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 auditor a statement, duly subscribed and sworn to by said president or other chief 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; 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 June in each year, and the actual cash value thereof."

Section 11247:

"On the third Monday of April in each year, the state auditor shall lay before the state board of assessment and equalization all returns made to him by every railroad company and county clerk."

Section 11248:

"The state board for the assessment and equalization of railroad property shall be composed of the governor, secretary of state, state auditor, state treasurer and attorney-general, and shall meet annually at the capitol in the City of Jefferson, on the third Monday of April of each year, for the purpose of assessing, adjusting and equalizing the valuation of such railroad property. The said board shall proceed to assess, adjust and equalize the aggregate valuation of the property of each one of the railroad companies in this state specified in section 11243. The board shall have power to summon witnesses by process issued to any officer authorized to serve subpoenas, and shall have the power of a circuit court to compel the attendance of such witnesses, and to compel them to testify; they shall have the power, upon their knowledge, or such information as they can obtain, to increase or reduce the aggregate valuation of the property of any railroad company included in the statements and returns made by the railroad companies and the clerks of the county courts, and shall assess, adjust and equalize any other property belonging to said railroad companies, or property belonging to any railroad companies in this state of the kind specified in section 11243, upon which no returns have been made, which may be otherwise known to them, as they may deem just and right. In assessing, adjusting and equalizing any railroad property for any year or years, the state board may arrive at its finding, conclusion and judgment, upon its knowledge, or such information as may be before it, and shall not be governed in its findings, conclusion and judgment by the testimony which may be adduced, further

than to give it such weight as the board may think it is entitled to: Provided, that when any railroad shall extend beyond the limits of this state and into another state in which a tax is levied and paid on the rolling stock of such road, then the said board shall assess, equalize and adjust only such proportion of the total value of all the rolling stock of such railroad company as the number of miles of such road in this state bears to the total length of the road as owned or controlled by such company."

Section 11254:

"The said board shall cause to be kept a fair and full record of all its proceedings and decisions, and shall cause the same to be signed officially by the president and the secretary, and file said record in the office of the state auditor on its adjournment. As soon as said record is filed with the state auditor, he shall furnish a copy of the same, duly certified, under seal of his office, to the state printer for publication; and said state printer shall publish five hundred copies of the same, in the usual style and at the same rates now provided by law for the publication of the journals of the general assembly; and said published copy of the record of the proceedings and decisions of said board shall be received in all courts of this state as evidence of the action of said board. Said printed copies shall be disposed of as follows: Two hundred copies shall be delivered to the secretary of state, for the use of the members and officers of said board, and the remaining three hundred

copies shall be for general distribution, in the same manner as is now or may hereafter be provided by law for the distribution of the laws and journals of the general assembly. The cost of printing and distributing the same shall be paid for out of the appropriation for the contingent expenses of said board."

Section 11255:

"On the receipt of the proceedings of said board, the state auditor shall certify to the secretaries of the respective railroad companies, and also to the county courts of the proper counties, the action of said board, which certificate shall set forth the entire length of such railroad, including sidetracks, in the state, and the valuation thereof per mile; the total value of the rolling stock of said railroad; the total length of the roadbed, including sidetracks, in each county, city, town, village, and municipal township; also, the total value of roadbed and sidetracks and rolling stock as adjusted, equalized, assessed and apportioned to such county, city, town, village and municipal township therein by said board; and such certificates, respectively, shall be held and received in all courts and places where the action of said board shall be called in question, as prima facie evidence of the facts set forth in said certificates, and that each and every act and thing required to be done by said board, under the provisions of this article, had been fully complied with, and the party using or offering such certificate in evidence shall not be required to produce the record of the proceedings or decisions of said board, or a copy thereof, nor any other matter or thing as evidence to sustain such certificate."

In the case of State ex rel. School District of Webster Groves v. Hackmann, 294 Mo. 190, the Supreme Court had before it the question of what constituted the assessment next before the last for the purpose of ascertaining the value of the property in a political subdivision in relation to the amount of indebtedness that the school district could incur. The Court held that it must be an assessment which had been taken as of a certain time, regardless of whether or not the parts of the assessment were all equalized and completed at the same time. We quote at length from this case where the Court, at l. c. 193-195, used the following language:

"The contention is that under Articles XVI and XVIII of Chapter 119, Revised Statutes 1919, the assessment of merchants' and manufacturers' stocks for 1920 was completed in September, 1920, and the taxes thereon collected November 1st of that year, and that the assessment of like stocks for 1921 was completed in September of 1921 and collected November 1, 1921; that, therefore, the assessment of such stocks for 1921, was, in April, 1922, the 'last' completed assessment, and that that completed in 1920 was, therefore, the 'next before the last' completed assessment, and, consequently, that of 1920 is the valuation of merchants' and manufacturers' stocks which goes into the valuation upon which the constitutional five per cent must be computed.

"(1) The language of Section 12 of Article X of the Constitution, so far as pertinent, is: 'No . . . school district . . . shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be in-

curred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes, previous to the incurring of such indebtedness.' The words 'on the value of the taxable property therein' are significant. They make it clear that the purpose was to limit the indebtedness, which might be incurred, to five per cent of the value of the property in the subdivision which proposed to issue bonds. This implies the ascertainment of the value in some way and as of sometime. The Constitution does not leave this to implication. In the same sentence it fixes the method by which the value shall be ascertained and thereby fixes the time as of which the value is to be taken for the purpose in hand. So far as concerns all property other than stocks of merchants and manufacturers, the value fixed as of June 1, 1919, goes into the constitutional basis for the computation of the five per cent limitation in its application to this case. This was the value of such property 'therein,' i. e. in relator district, for the purposes of this proceeding. Subsequent changes in that valuation all relate to the original date. The valuation is fixed as of that date. (1 Cooley on Taxation (3 Ed.), pp. 604, 605, 606.) Upon the same date merchants and manufacturers were required to make their return. (Sec. 13071, R. S. 1919.) These returns disclosed the value of such property 'therein.' The total in fact disclosed, for present purposes, the actual value of all the property in the district on June 1, 1919. It was the value of all the property which was required to be taken in computing the five per cent. The Constitution uses the assessment merely as a method by which the value of the property in

a subdivision may be ascertained. This cannot be accomplished by taking the value of the real, personal and railroad, telegraph and telephone property as of June 1, 1919, and the value of merchants' and manufacturers' stocks as of June 1, 1920, and adding them together. In this case this would result in adding to the value of the property in relator district as of June 1, 1919, \$135,000, which was not in the district on that date, and thereby using as a basis for the five per cent computation the value of part of the property in the district in 1919 and the value of other property which was not in the district in 1919. The result is a value which in no event could represent the property in the district at any time, unless the assessments, by mere chance, were the same.

"(2) It is a completed assessment which must be taken. For the purpose of fixing the value of the taxable property therein with respect to any subdivision, this means an assessment completed in every respect. The merchants' and manufacturers' assessments made in 1920 as completed, so far as they are concerned, were completed in September, but the remainder of the 1920 assessment was not completed until 1921. The same thing is true of the assessment of 1921. The fact that the merchants' and manufacturers' taxes were collected more promptly than the rest does not affect the question. It remains true that, whether these taxes are collected or not, the assessments on which they are based do not become a part of a completed assessment until the whole assessment is completed. * * * * *

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In the cases of State ex rel. Jamison v. St. Louis-San Francisco Railway Co., 318 Mo. 285, and State ex rel. Lane v. St. Louis-San Francisco Railway Co., 338 Mo. 852, mentioned in the copy of letter from Mr. Fizzell enclosed with your opinion request, the Supreme Court had under consideration the words "last assessment" as used in Section 11 of Article X of the Constitution in connection with the levying of the tax rate by county courts. From an examination of facts set in these two cases, it might appear that the court in these cases approved the use of what might be termed a split assessment, that is, a portion of an assessment taken in one year and a portion of an assessment taken in another year, to be used as the last completed assessment for the purpose of ascertaining the rate which could be levied by the county court. If this is true, then it might be considered as furnishing at least the basis of a strong argument that such split assessment might be used in ascertaining the valuation of a political subdivision for the purpose of issuing bonds. However, we do not believe that any such split assessment could be used in that manner, for the purpose of ascertaining valuation to be used in connection with the issuance of bonds, and in this connection we call your attention to; First, these two cases were cases involving the tax levy and not the validity of bonds, Second, that in the case of State ex rel. Jamison v. Railway Co., the Supreme Court upheld the levy made by the county court, which was being questioned, without directly passing upon the question of the matter of using a split assessment, and in discussing the question, at l. c. 291, used the following language:

"The last assessment for state and county purposes, that is, the completed assessment for 1922, does not appear in the stipulation, further than the final valuation of merchants' stocks, which was nearly \$30,000 less than the 1923 valuation on the same item. But it is not necessary that the proof of the total of the 1922 assessment appear in the record in order that the judgment of the trial court should be entitled to affirmance."

The above quoted language would seem to be giving recognition to the principle that the last assessment must be as of some given time and not taken piecemeal. In the case of Lane v. St. Louis-San Francisco Railway Co., it seems that the question was solely upon which real estate and personal property assessment should have been used in determining the 1931 tax rate for the county; Third, neither of these cases in any manner takes up, cites or even mentions the case of State ex rel. Webster Groves School District v. Hackmann, supra, and while they may be authority for using a split assessment to fix the rate of levy for purposes of taxation, inasmuch as the Webster Groves case is not specifically overruled, we prefer to follow it as the law as to what is meant by last completed assessment for the purpose of ascertaining valuation upon which to base a bond issue.

In the case of State ex rel. Carthage v. Hackmann, 287 Mo. 184, a mandamus proceeding in which relator sought to compel the state auditor to register certain bonds in discussing the above quoted portion of Section 12 of Article X of the Constitution, used the following language at l. c. 188:

"The assessments mentioned in this section mean completed assessments. (State ex rel. City of Dexter v. Gordon, 251 Mo. 303; State ex rel. v. Wabash, 251 Mo. 134; Steinbrenner v. St. Joseph, 226 S. W. 890.) The clause 'previous to the incurring of such indebtedness' means previous to the authorization of the indebtedness in the election held by the voters of the municipality. (State ex rel. City of Dexter v. Gordon, supra; Steinbrenner v. St. Joseph, supra.) The State Board of Equalization had not completed the equalization of the 1918 assessment and certified its action thereon previous to September 16, 1919, the date of the election, and hence the assessment of 1916 was the 'next before the last assessment,' and must be used as the measuring rod."
(Underscoring ours)

And again, in the case of State ex rel. Jamison v. St. Louis-San Francisco Railway Co., 318 Mo. page 285, a case which involved the validity of a tax rate levied and in which the words "last assessment" as used in Section 11 of Article X of the Constitution were being considered, the Supreme Court, in its discussion, at l. c. 290, said:

"* * * * When the valuation fixed by the State Board of Equalization for railroad and telegraph property is not certified until after the May term of the county court, such valuation cannot be used at that time as any part of the 'last assessment.'
* * * * *"

From the above cases it is our belief that before an assessment can be used for ascertaining the validity of bonds issued under authority of Section 12, Article X of the Constitution, the values, as shown by such assessment, must not only have been equalized but the result of the action of the State Board of Equalization must have been certified to the county in which the political subdivision is located, seeking to use the assessment as a measuring rod to ascertain whether or not its bond issue is within the Constitutional limitation.

Further, in the case of State ex rel. Jamison v. St. Louis-San Francisco Railway Co., supra, some illuminating discussion is found at l. c. 289, as follows:

"The term 'last assessment' is merely an arbitrary measuring rod which is not necessarily accurate at the time it is applied. In fixing the limit of indebtedness under Article X, Section 12, the 'assessment next before the last assessment' is used as the measuring rod, notwithstanding the actual assessed value in the taxing district may have markedly increased or decreased between the date of such 'assessment next before the last assessment' and the time when the particular bonds are voted."

* * * * *

"* * * * If the assessment for the current year is completed at the time the levy is made, well and good. That assessment can be used as the measuring rod to ascertain the rate which can legally be levied. If the assessment for the current year is not complete at that time, then the completed assessment for the previous year must be used."

Under your statement of the question the State Board of Equalization has apparently completed its work of valuing and equalizing but has been prevented from certifying the result by the injunction. While the State Board of Equalization could not at this time change its valuation, the valuation is yet subject to be changed by decree of the court, further it has not yet reached any county, due to the injunction. An attempt to use the valuation for the year 1939, if it were obtained unofficially, would be an attempt to use an elastic measuring rod, and we do not believe this would be permissible.

CONCLUSION

It is our opinion that the assessment for the year 1939 can not be treated as a completed assessment in ascertaining the valuation of the property in a political subdivision as shown by the next before the last assessment for the purpose of issuing bonds until certified to the various counties.

Respectfully submitted,

APPROVED:

W. O. JACKSON
Assistant Attorney General

VANE C. THURLO
(Acting) Attorney General