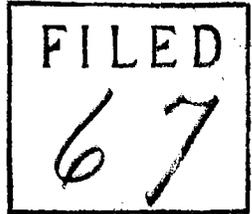


ROADS: Special tax levied for cutting weeds and brush growing in road cannot be expended for any other purpose and must be levied in accordance with statute.

April 26, 1945



Honorable Wayne Norman
Prosecuting Attorney
Unionville, Missouri

Dear Mr. Norman:

The Attorney General acknowledges receipt of your letter dated April 21, 1945, in which you make the following request for an opinion:

"Under section 8820 of the Missouri Revised Statutes, 1939, it appears that a township may levy up to 20¢ on the \$100 for the purpose of cutting and removing weeds and brush from country roads. Under subsection C of this section would you say that all lands adjoining a public road could be taxed to the full amount or if a part of said land were more than $\frac{1}{2}$ mile from the public road be subject to only 10¢ per \$100? In other words if three 40 acre tracts of land, owned by one man, one 40 adjoining the public road and the other two were back of it, could the 3rd 40 be taxed the same as the one adjoining the road although it was more than $\frac{1}{2}$ mile from the road? You will notice that this section starts off by specifying 'all lands' and ends up by using the words 'tracts of land', could land adjoining a state maintained road be taxed and the money used on roads elsewhere in the township?

"In your opinion could the road overseer only remove brush and weeds growing only between fences of the road or would he be allowed to go a reasonable distance beyond the fence to remove brush and weeds which damage the road?"

For convenience and to illustrate our conclusion, the portions of Section 8820, R. S. Mo. 1939, most pertinent to answering your questions, are herein set out.

Paragraph "(a)" places upon the road overseer the duty of cutting weeds and brush along the roads. The portion of this is as follows:

"It shall be the duty of the road overseer to keep the roads in his district in as good repair as the funds at his command will permit, to have all brush and weeds found growing along the roadside of the public highway cut and removed during the month of August of each year, * * *"

Paragraph "(c)" authorizes the levying of a benefit tax to pay the cost of the brush and weed cutting, and provides as follows:

"(c) For the purpose of carrying out the provisions of this section there is hereby levied in addition to all other road tax upon all real estate not incorporated within the limits of any city, town or village a special benefit tax of twenty cents per hundred dollars valuation on all land abutting upon or lying within one-half mile of any public road, and ten cents per hundred dollars valuation on all land lying more than one-half mile and up to one mile of any public road, and five cents per hundred dollars valuation on all land lying more than one mile and up to one and one-half mile from any public road, which tax benefits shall be spread upon the road overseer's books by the clerk of the township board, giving the name of the owner of each tract as it appears upon the assessor's book, the description of the land and the benefits charged set opposite each tract, which benefit tax books with blank receipt books shall be delivered to the road overseers of their respective districts on or

before the 15th day of May of each year, which books may also contain the names of those subject to poll tax. The said overseers, before entering upon their duties, shall give a good and sufficient bond payable to the township trustees in a sum equal to the amount of benefits charged against the land in their districts: Provided, that no tract of land lying within the radius of a public road as prescribed in this section shall be taxed in excess of twenty cents on the one hundred dollars valuation for any one year."

Paragraph "(e)" prescribes the procedure of the township board and authorizes it to reduce the levy for this purpose if the full amount is not considered to be necessary, and paragraph "(g)" prohibits the use of the funds derived from this benefit tax for any other purpose. Paragraph "(g)" is as follows:

"(g) Benefit levied must be used for the purpose levied. Poll tax may be used for any road purpose whatever."

In connection with these quotations from the statute, attention is directed to a few of the fundamental rules of statutory construction. The first of these rules is taken from Section 655, R. S. Mo. 1939:

"* * * First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import; * * *"

And the following rules are cited from cases applying them:

The primary rule of construction of statutes or ordinances is to ascertain and give effect to the lawmakers' intent, which should be done from the words if possible, considering the language honestly and faithfully to ascertain its

plain and rational meaning and promote its object and manifest purpose.

City of St. Louis v. Pope, 126 S. W. (2d) 1201, 344 Mo. 479; Artophone Corporation v. Coale, 133 S. W. (2d) 343, 345 Mo. 344; City of St. Louis v. Braudis Coal Co., 137 S. W. (2d) 668.

Every word of the statute must be given some meaning if possible.

State ex rel. Kansas City Light and Power Co., v. Smith, 111 S. W. (2d) 513, 342 Mo. 75; Graves v. Little Tarkio Drainage District, 134 S. W. (2d) 70, 345 Mo. 557.

Bearing these rules in mind, attention is now directed to the statute. Paragraph "(a)" requires the road overseer to cut the weeds and brush "growing along the roadside of the public highway." It is a matter of common knowledge that the whole width of land dedicated to public use is not traveled over and that the untraveled portion of the roads do grow up in weeds and brush, and to eliminate these weeds and brush is the reason for the levy of this tax. However, this direction to cut the weeds and brush growing along the roadside does not convey any authority to the road overseer to invade private property and interfere with the landowner's use of his land.

From reading the entire statute, it seems obvious that the intention of the Legislature was to make provision for the remedying of this condition of weeds and brush growing in the roads and this provision provides funds for that purpose (paragraph "(c)", supra) by charging the costs to the lands benefited in accordance to the benefits which accrue from the lands. Under the provision of paragraph "(c)", supra, a benefit tax of twenty cents per hundred dollars valuation is authorized against all lands abutting on the highway or lying within one-half mile of any public road, ten cents per hundred dollars valuation on all lands lying more than one-half mile and up to one mile of any public road, and five cents per hundred dollars valuation on all land lying more than one mile and up to a mile and a half from any public road. By the use of the words, "or lying within one

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half mile of any public road" in the first clause, the Legislature limited and defined the meaning of the word "abutting" so that under the provisions of this section the word "abutting" means lands lying within one-half mile of a public road.

To illustrate the application of this section - if a man owned a tract of land composed of three quarter-section tracts, one of which abutted on a public road, the other two extending back from the road, a tax of twenty cents per hundred dollars valuation could be levied upon the 160 acres adjoining the road, the 160 acres immediately back of it could be taxed at ten cents per hundred dollars valuation, and the third or back 160 acres, at five cents per hundred dollars valuation. And if he should then own another quarter section back of this, it could not have this tax levied on it.

The statute makes no distinction between roads which are state maintained and those which are locally maintained, for the purpose of this tax, and does not require the money raised by the tax to be spent along the land upon which the tax is paid.

Conclusion

From the foregoing, it is the opinion of this office that the answers to your questions are as follows:

(1) The third 40-acre tract could not be taxed at the same rate as the one lying along the road, for a square 40 acres is a quarter of a mile on each side, and the third 40 would be more than a half mile from the road;

(2) The money raised by this tax may be used for the purpose of cutting the brush and weeds in and along the road but cannot be expended for cutting brush and weeds growing on private property; and may be spent on any township road.

(3) The road overseer is not given any authority by this statute to invade private property to cut weeds and brush which might be damaging the road.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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