

SCHOOLS: Real estate owned by William Jewell College and used exclusively for educational purposes is tax exempt.
TAXATION: County court authorized to rebate taxes assessed against property owned by said school.

October 28, 1947



Honorable Bart M. Lockwood
Assistant Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"In 1941 the Safeway Stores built a grocery store at 8th & Messanie Sts. in this city and after completing it and opening a grocery store therein sold the premises to the trustees of William Jewell College as an investment. It was placed on the assessment roll of the county by the assessor at a valuation of Thirty Thousand Dollars and assessed regularly each year by the City and County so there are delinquent taxes thereon ever since amounting to between \$1500 and \$2000. due the City and County and State.

"William Jewell College has filed a petition, (Copy enclosed.) with the County Court asking abatement of the State and County taxes so assessed thereon claiming that under their charter, the Constitution and laws of Missouri that said lands are exempt from taxation.

"As the state taxes are affected and thinking that your office has had this matter before them in like situations we would appreciate your opinion on these two questions herein involved, to-wit:

"1. Are Lots Five and No. 26'feet of Lot Six Block One Patee's Addition in St. Joseph, Buchanan County, Missouri, owned by the Trustees of William Jewell College upon which the Safeway Stores operate a

grocery store, exempt from taxation?

"2. Has the County Court of Buchanan County the power or authority (Under Sec. 24 Laws 1945 page 1789 or any other law) to order such abatement or grant the exemptions claimed?"

It has long been held by the courts in this state that land owned by William Jewell College is exempt from taxation. An attempt was made to make certain land taxable under the claim that the charter of said school did not specifically exempt from taxation land owned by said school, but that it was tax exempt as a result of an act of the Legislature passed in 1851, which law was enacted subsequent to the granting of the charter to said school, and that the Legislature could thereby repeal any such legislative grant of immunity and that said Act of 1851 was repealed by the Constitutions of 1865 and 1875 and by subsequently enacted statutes. In *Trustees of William Jewell College vs. Beavers, Collector of Revenue of Worth County, Missouri*, 171 S.W. (2d) 604, 351 Mo. 87, the court held that the tax exemption clause in the Act of 1851, pertaining to said college, had been construed as a part of the charter of said college and it was thereby accepted as such. In so holding, the Supreme Court said, l.c. 94:

"In *State ex rel. Waller v. Trustees of William Jewell College*, 234 Mo. 299, 136 S.W. 397, this Court en Banc did construe these two sections together. The principal question there was whether the tax exemption went beyond real estate owned and included all property; although this same claim of repeal of this exemption by the 1865 and 1875 Constitutions was also made and that would have subjected all property to taxation. This court therein said of Section 13 of the 1849 Act, that it was 'a legislative declaration . . . to the effect that the property of this corporation was to be devoted to a public purpose; that, in no other charter of that period, are the funds of the institution so completely impounded for public purposes as in the charter before us'; that 'it has always been the law that property used for state, county, municipal and other public purposes should not be taxed'; and that

'there would have been no special reason for limiting the use of the property of this corporation strictly to educational purposes, except upon the theory that there was a public purpose and some immunities might be expected from the state.' The court then held that 'the original act authorized the gathering together of an endowment for the college'; that 'the fund thus collected was limited to a use which the State not only recognized as a public use, but one which the State should foster and aid' (under then existing constitutional provisions); and that 'when all the surroundings are considered, the public policy of the State considered, these two acts considered, and other acts about the same time are considered, it is evident that there was a legislative intent to relieve the property constituting the endowment fund of this corporation from the burdens of taxation.'

"As to the contention made in the Waller case, that the exemption had been repealed by subsequent constitutional and statutory provisions, this court therein held that 'the question, however, has been fully settled by the adjudications of this court upon similar statutes, and we shall not re-open nor re-argue it.' This court then cited *St. Vincent's College v. Schaefer*, 104 Mo. 261, 16 S.W. 395; *State ex rel. v. Westminster College*, 175 Mo. 52, 74 S.W. 990. Neither of the concurring opinions nor the dissenting opinion questioned this ruling of the majority. In the *St. Vincent's College* case, the original charter act was adopted in 1843 while the tax exemption was enacted in 1853 and it was given the same effect by this court as if it were a part of the charter, which could only be true if the later act did become a part of the charter. This case has never been overruled or even questioned. * * * "

Furthermore, the court said on motion for rehearing, l.c. 97:

"This contention was not fully discussed in the Divisional opinion because defendant's principal contention in the trial court, and before Division One, was that the Act of 1851 was no part of plaintiff's charter and therefore the tax exemption was not contractual at all. This latter point is also reargued in the motion for rehearing. We held that it was 'reasonable to consider the two acts together as constituting plaintiff's entire charter and its acceptance as such,' and we adhere to that ruling."

The foregoing holding of the court is supported by the decision rendered in *Curators of Central College vs. Rose*, 182 S.W. (2d) 145, l.c. 148, wherein the court stated its opinion as to what the foregoing decision held and said:

" * * * We think it is apparent from a reading of the opinion in the case of *William Jewell College v. Beavers*, supra, that the quoted portion of the opinion refers to the act (1) as a part of the charter of William Jewell College and (2) to the rights thereunder vested in said college. * * *

" * * * After the adoption of the said constitutional provisions, that part of the Act of 1851, supra, granting immunity from taxation generally (on lands granted or devised to institutions of learning generally) was void, and only that part of said act which constituted a part of the charter of William Jewell College, remained in force. *State ex rel. Morgan v. Hemenway*, 272 Mo. 187, 198 S.W. 825, 828; *St. Joseph & I.R. Co. v. Cudmore*, 103 Mo. 634, 15 S.W. 535; *St. Joseph & I.R. Co. v. Chambaugh*, 106 Mo. 557, 570, 17 S.W. 581; *Deal v. Mississippi Co.*, 107 Mo. 464, 468, 18 S.W. 24, 14 L.R.A. 622. * * * "

In view of the foregoing decisions of the Supreme Court, there is no longer any question as to whether land owned by said William Jewell College is tax exempt. It definitely has held same as not

taxable; that the constitutional provisions of 1865 and 1875 and subsequently enacted legislation exempting said property from taxation does not affect land owned by said college; that the state entered into a contract when it granted a charter to said school in 1849 and that the Act of 1851, making property of said school exempt from taxation, should be construed as a part of said charter and to now tax such property would be to impair the obligations of a contract in violation of the Constitution of the United States and this state.

The only remaining question is, can the county court abate such property taxes for 1942 to 1946 inclusive, assessed against William Jewell College:

The county courts in this state possess only limited jurisdiction, and outside of the management of the county fiscal affairs, possess no powers except those conferred by statute. See *Missouri Electric Power Co. vs. City of Mountain Grove*, 176 S.W. (2d) 612, 352 Mo. 262.

We find the following statutes dealing with the powers of the county court. Section 11114, R. S. Mo. 1939, authorizes the county court, at the term of county court at which the several delinquent lists are required by law to be returned and certified, to examine same and, if the court finds same are not taxable, then the court should correct such error by the best means in its power, and cause the list so corrected to be certified and filed in the office of the clerk of the county court. Section 11114, supra, reads:

"At the term of the county court at which the several delinquent lists are required by law to be returned and certified, the said court shall examine and compare the list of lands and town lots on which the taxes remain due and unpaid; and if any such lands or town lots have been assessed more than once, or if any of said lands or town lots are not subject to taxation, or if the legal subdivision be incorrectly described, in all such cases the said court shall correct such error by the best means in their power, and cause the list so corrected to be certified and filed in the office of the clerk of the county court; and shall also cause the amount of the

state, county and municipal taxes to be entered on record, and the amount of the state taxes to be certified to the state auditor, and amount of municipal taxes to be certified in St. Louis city to the mayor of the city of St. Louis, to the credit of said collector."

In addition to the foregoing statutory authority granted the county court, we are inclined to believe that under Section 11118, R. S. Mo. 1939, the county court was authorized to abate said taxes. However, that provision was repealed by the 63rd General Assembly and enacted in lieu thereof H.C.S.H.B. No. 537, pages 1847 to 1852, inclusive, Laws of Missouri, 1945. However, no provision similar to Section 11118, supra, was enacted by the 63rd General Assembly. That body did, however, enact a provision which we believe authorizes the county court to abate said taxes. Section 24, pages 1789-1790, Laws of Missouri, 1945, authorizes the county court to hear and determine allegations of erroneous assessments or mistakes or defects in descriptions of lands at any term of the court before said taxes are paid when any person shall by affidavit show good cause for not having appeared before the board of equalization. While Section 24, supra, does not specifically grant the county court power to rectify any assessment, it certainly follows that it would at least by implication have such power to correct any such erroneous assessment it might find after said hearing. It would have been useless to authorize a hearing for the purpose of determining if an erroneous assessment had been made unless the court would have such power to correct same. Section 25 of the same act supports this contention and clearly indicates that it was the legislative intent for the county court to make any such correction by requiring the county clerk, upon order of the county court, to immediately correct the tax book, and further, prescribe what he shall do if such orders shall change the value of property or the amount of taxes. Said Sections 24 and 25 read as follows:

"Section 24. The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors

or defects or mistakes. Where any lot of land or any portion thereof has been erroneously assessed twice for the same year, the county court shall have the power and it is hereby made its duty, to release the owner or claimant thereof upon the payment of the proper taxes. Valuations placed on property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section."

"Section 25. The clerk of the county court shall immediately correct the tax book, and the copy thereof furnished for the use of the collector, under any order which may be made by said court in pursuance of the foregoing section; and if, by such correction, any alteration is made in the value of the property or the amount of the taxes, he shall certify the same to the state auditor, who shall, on the settlement, allow the collector credit for any sum or sums to which such correction may entitle him."

Erroneous assessment has been defined as follows in In re Blatt, 67 P. (2d) 293, l.c. 301, wherein the court said:

"Speaking through Judge Lewis, the Circuit Court of Appeals of this, the Tenth Circuit, said in denying the relief prayed for: 'The Colorado statute (section 7447), on which plaintiff relies, permits recovery only when the taxes paid are thereafter "found to be erroneous or illegal."' Judge Lewis quotes with approval from the Clay County Case to the effect that an 'excessive assessment' is not an 'erroneous assessment.' Judge Lewis also quoted from the case of Stanley v. Supervisors of Albany County, 121 U.S. 535, 7 S.Ct. 1234, 30 L.Ed. 1000, as follows: 'It (the method of assessment as to banks complained of) must sometimes lead also to overvaluation of the shares; but, if so, no ground is thereby furnished for the recovery of the taxes collected thereon. It is only where the assessment is wholly void, or void with respect to separable portions of the property, the

amount collected on which is ascertainable, or where the assessment has been set aside as invalid, that an action at law will lie for the taxes paid, or for a portion thereof. Overvaluation of property is not a ground of action at law for the excess of taxes paid beyond what should have been levied upon a just valuation. The courts cannot, in such cases, take upon themselves the functions of a revising or equalizing board.' Judge Lewis concludes as follows: 'Moreover, an error as to valuation of property for taxation does not go to the question of jurisdiction of the taxing officer, and even if excessive it does not render the tax illegal and void, which is necessary in order to recover in an action at law. Stanley v. Supervisors of Albany County, supra.'

See also Flournoy vs. First National Bank, 3 S.W. (2d) 244, l.c. 252.

In view of the foregoing decisions, we are convinced that the foregoing tax in question is the result of an erroneous assessment for the reason that such property owned by William Jewell College is exempt from taxation and therefore, the assessor was not authorized to assess such property, and in doing so, he exceeded his jurisdiction and said assessment is void. Under any circumstances, said taxes could not be collected, neither could such property be sold for taxes. The school could enjoin the collector from selling said property if an attempt should be made to sell same for delinquent taxes.

CONCLUSION

It is the opinion of this department that the property in question is exempt from taxation and therefore, the taxes heretofore assessed against said property are erroneous assessments and the county court may so find and abate said taxes under Section 11114, R. S. No. 1939, and Section 24, pages 1789-1790, Laws of Missouri, 1945.

Respectfully submitted,

APPROVED:

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