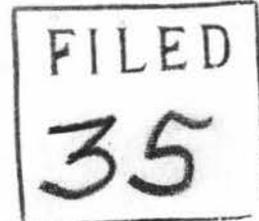


TAXATION:
LOCAL ASSESSMENTS:

Property of state not subject to local assessment
by city of third class for paving of street.

August 24, 1950



Mr. R. L. Groves
Fiscal Officer
Adjutant General's Office
Jefferson City, Missouri

Dear Mr. Groves:

This will acknowledge receipt of your recent request for an opinion of this department, which request reads as follows:

"This office has been presented with an assessment bill for the paving of street adjoining a state-owned armory.

"It is requested this office be advised whether, under existing laws, municipalities may levy benefit assessments on state property for street improvements.

"In the event the reply is in the affirmative can funds appropriated under House Bill No. 25, Section 4.026-Personal Services; Additions; Repairs and Replacements, or Operations be utilized for payment?"

It has been ascertained that the Adjutant General's Office has been presented with an assessment bill by the City of Kennett, Missouri, for the paving of a street adjoining the state-owned armory within the city. The City of Kennett is a city of the third class. The question then is whether or not an assessment bill levied by a third class city against property owned by the state for the paving of a street adjoining such property is a valid assessment.

The constitutional and statutory exemption of public property from the burden of taxation apply only to general taxation and cannot be relied upon in the case of special assessments for public improvements. A distinction is made between taxes for local assessments and taxes levied for general public purposes. We find

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the following stated by the court in the case of Normandy Consol. School District v. Wellston Sewer District, (Mo. App.) 77 S.W. (2d) 477, at l.c. 478:

"It has been consistently held that neither the Constitution (article 10, Sec. 6, Const. Mo.) nor the statute (section 9743, R.S. 1929 (Mo. St. Ann. Sec. 9743, p. 7863)), both of which provide for the exemption of certain kinds of property, including public property, from taxation, purport to refer to or include an exemption from special assessments for local improvements, and that it is therefore within the legislative power and will, in the passage of legislation providing for the making of local, public improvements, to require public property benefited by the improvement to pay its proportionate share of the expense thereof. City of Clinton v. Henry County, 115 Mo. 557, 22 S.W. 494, 495, 37 Am. St. Rep. 415; Thogmartin v. Nevada School Dist., 189 Mo. App. 10, 176 S.W. 473."

In City of Clinton v. Henry County, 115 Mo. 557, 22 S.W. 494, the court held at l.c. 565:

"The question whether public property, such as courthouse property, should share in paying for street improvements is one open to the legislative will. We must therefore look to the statute relating to cities of the third class to see what the legislature has declared upon this subject. We repeat that the constitution, and general law relating to exemption from taxation, have no bearing upon the issue of law in this case. The question is one of delegated power, and not of exemption from taxation."

Therefore, we must look to the statutes which authorize cities of the third class to levy assessments for the paving of streets and determine whether or not authority has been given such cities to assess state property for such local improvements. Section 6987, R.S.Mo. 1939, authorizes cities of the third class to grade, pave and improve streets and alleys, and provides that the cost of such shall be charged against the lots and tracts of land fronting or abutting on such streets and alleys.

Section 6987 further provides that:

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"* * *All lands owned by any county or other political or municipal subdivisions, cemeteries and railroad rights of way, fronting or abutting on any of said improvements shall be liable for their proportionate part of the cost of such improvement, and tax bills shall be issued against such property as against other property, and any county, city or other political or municipal subdivision that shall own any such property shall out of the general revenue funds or other funds pay any such tax bill, and in any case where any county, city or other political or municipal subdivision, cemetery company or owners or railroad company, shall fail to pay any such tax bill, the owner or holder of same may sue such county, city or other political or municipal subdivision, cemetery company or owners or railroad company on such tax bill, and be entitled to recover a general judgment against such county, city or other political or municipal subdivision, cemetery company or owners or railroad company.
* * *"

We now must determine whether or not the wording of Section 6987, supra, "all lands owned by any county or other political or municipal subdivision," include property owned by the state.

In Normandy Consol. School District v. Wellston Sewer District, supra, the court further held at l.c.478:

"But even though the legislative body has the unquestioned power to require public property located in a benefit district to pay its proportionate share of the cost of the benefit, yet the rule is that public property, which is made use of as an integral part of government in the exercise of a governmental function, is nevertheless to be held exempt from any such special assessment unless in the enactment of the law the law-makers have manifested a clear legislative intent that such public property shall be subject to the assessment. This doctrine traces its ancestry back to the ancient common-law principle that the crown was not to be bound by any statute, the words of which restrained or diminished any of his rights or interests, unless he was specially named therein; and the theory of the modernized restatement of the

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principle is that to require public funds to be paid out for taxes would necessarily divert such funds from the true public use which they are otherwise designed to serve. And of course, if a clear expression of legislative intent is to be required as the basis for the enforcement of special tax bills against public property strictly devoted to public use, then mere general language in a statute will not suffice to warrant such assessment, and public property will not be held included within the scope of any such statute unless by express enactment or clear implication. *City of Clinton v. Henry County, supra*; *City of Edina, etc., v. School Dist., etc., supra*; *City of St. Louis v. Brown, 155 Mo. 545, 56 S.W. 298*; *State ex rel. v. School Dist. of Kansas City, supra*; *Thogmartin v. Nevada School Dist., supra.*"

We fail to see where state property is by express enactment or clear implication included in "all lands owned by any county or other political or municipal subdivision" which Section 6987 provides shall be subject to local assessments. The state is no "municipal subdivision," nor is it included as an "other political subdivision." The state, in the enactment of its statutes, acts in its sovereign capacity as a political entity and while acting as such cannot be considered a political subdivision in its legislation.

Article X of the Constitution of 1945 is the article providing for taxation. Section 1 of this Article distinguishes between the taxing power exercised by the General Assembly for state purposes and by counties and other political subdivisions for local purposes. Section 6 treats of the property of "the state, counties and other political subdivisions." Section 15, in defining "other political subdivision," does not include the state within its definition.

Section 5 of an Act of the 63rd General Assembly found in Laws Missouri 1945, page 1800, exempts from taxation for state, county or local purposes, "First, lands and other property belonging to the state; Second, lands and other property belonging to any city, county or other political subdivision in this state."

In view of the above, it is our opinion that the legislature.

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has failed either by express enactment or clear implication to include property owned by the state among that public property made liable for local assessment by Section 6987.

The necessity of answering the second question presented in your request disappears by reason of the answer to your principal inquiry.

CONCLUSION

It is therefore the opinion of this department that cities of the third class have no authority to levy assessment bills for the paving of streets against lots or tracts of land owned by the state.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General