

TAXATION (INTANGIBLE):
BLIND PERSONS:

The blind pension fund of the State of Missouri is not entitled to share in the intangible personal property tax collected by the state.

September 4, 1970

OPINION NO. 348

Honorable Robert A. Young
Senator, 24th District
3500 Adie Road
St. Ann, Missouri 63074



Dear Senator Young:

This official opinion is rendered pursuant to the request contained in your letter concerning the blind pension fund of the State of Missouri. More specifically, the following question is presented:

"Is the Blind Pension Fund entitled to a share of the intangible personal property tax collected?"

Article III, Section 38(b) of the Constitution of Missouri provides, in part, as follows:

"The general assembly shall provide an annual tax of not less than one-half of one cent nor more than three cents on the one hundred dollars valuation of all taxable property to be levied and collected as other taxes, for the purpose of providing a fund to be appropriated and used for the pensioning of the deserving blind as provided by law. * * * "

By authority of this constitutional provision, the legislature adopted Section 209.130, RSMo 1969, which, in pertinent part, reads as follows:

"There is hereby levied an annual tax of three cents on each one hundred dollars valuation of taxable property in the state of Missouri to provide a fund out of which shall be paid the

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pensions for the deserving blind as herein provided. The tax shall be collected at the same time and in the same manner and by the same means as other state taxes are now collected. The tax, when so collected, shall be paid into the state treasury to the credit of the blind pension fund, out of which fund shall be paid the pension as provided by law.
* * * "

Thus, it is provided in the constitution and the statutes that "taxable property" is to be taxed annually for the purpose of establishing and supporting a pension fund for the blind. "Taxable property" is classified by Article X, Section 4(a) of the Constitution of Missouri, which reads as follows:

" * * * class 1, real property; class 2, tangible personal property; class 3, intangible personal property. * * * "

Since intangible personal property is considered a form of "taxable property" by Article X, Section 4(a), supra, the question has been raised as to whether the blind pension fund is entitled to receive a portion of the tax on intangible personal property. At the present time no part of this tax is being paid into this fund.

Proper consideration of the question requires examination of certain other constitutional provisions and statutes relating specifically to intangible personal property taxation in Missouri.

Article X, Section 4(b), Constitution of Missouri, deals with the basis upon which property shall be taxed, stating:

"Property in classes 1 and 2 and subclasses of class 2, shall be assessed for tax purposes at its value or such percentage of its value as may be fixed by law for each class and for each subclass of class 2. Property in class 3 and its subclasses shall be taxed only to the extent authorized and at the rate fixed by law for each class and subclass, and the tax shall be based on the annual yield and shall not exceed eight per cent thereof."

It will be observed that real property and tangible personal property are taxed on the basis of value, while the tax on intangible personal property is based solely upon the "yield" derived from the property.

Article X, Section 4(c), Constitution of Missouri, deals with the distribution of the taxes collected on intangible personal property. That provision states:

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"All taxes on property in class 3 and its subclasses, and the tax under any other form of taxation substituted by the general assembly for the tax on bank shares, shall be assessed, levied and collected by the state and returned as provided by law, less two percent for collection, to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy."

Thus, all taxes on intangible personal property, less a small collection fee, are to be returned to the counties and other local political subdivisions.

In accordance with these constitutional provisions, the tax on intangible personal property has been implemented by statute. In Chapter 146, RSMo 1969, it is provided that the tax on intangible personal property shall be based upon the yield (which means the proceeds) of the property and that the rate of tax shall be four per cent of such yield. Every person, as therein defined, is required to file on or before April 15 a property tax return on intangibles, and the tax is payable at the time the return is made. Section 146.110, RSMo 1969, as amended, provides that the tax shall be distributed as follows:

"The director of revenue shall annually, on or before the fifteenth day of December, return the amount of intangible taxes collected, less two percent thereof, which shall be retained by the state for collection, to the county treasury of the county in which the particular taxpayers are domiciled or in which the intangible personal property which was the subject of the tax had its business situs. * * * "

Inasmuch as Article III, Section 38(b), Constitution of Missouri, and Section 209.130, RSMo 1969, provide for a tax based on the value of taxable property which is to be retained by the state for the benefit of the blind rather than returned to the counties and political subdivisions, it must be determined whether there is a conflict or whether the constitutional and statutory provisions can be reconciled.

It is the view of this office that the framers of the constitution did not intend to include intangible property within the scope of Article III, Section 38(b). The language of that provision is that the legislature shall provide a tax of not less than one-half of one cent nor more than three cents on the one hundred dollars valuation " * * * of all taxable property to be levied and collected as other taxes, * * *" (Emphasis added). The framers clearly intended for this property tax to be assessed, levied and collected in the same manner as were the general taxes on real estate and tangible personal property. Chapter 137, RSMo, which deals with the assessment and levy of property taxes, is concerned only with real property and tangible

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personal property. Special provisions for the assessment and levy of intangible personal property taxes take this out of the general category. For example, Section 137.075 provides:

"Every person owing or holding real property or tangible personal property on the first day of January, including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

The tax on intangible personal property is separately provided for by Chapter 146, RSMo, wherein the tax is based upon yield rather than valuation of the property. The apparent differences in the system of handling taxes on real and tangible personal property and intangible personal property indicate the framers of the constitution intended to limit the tax provided for in Article III, Section 38(b) to three cents on each one hundred dollars valuation of real and tangible personal property only.

It is well settled that if a literal interpretation of the language used in a constitutional provision would give it an effect in contravention of the real purpose and intent of the instrument as deduced from a consideration of all its parts, such intent must prevail over the literal meaning. *Moore v. Toberman*, 250 S.W.2d 701 (MO.1952). Furthermore, a constitutional provision should never be construed to work confusion and mischief unless no other reasonable construction is possible. *State ex rel. Jamison v. St. Louis-San Francisco Ry.Co.*, 300 S.W.274 (Mo.1927); *Moore v. Toberman*, (supra).

In the present situation a construction of Article III, Section 38(b), which would require intangibles to be taxed on the basis of valuation, would bring about a confusing result because other provisions of the constitution specifically state that all intangibles shall be taxed according to their yield. Furthermore, such a construction would require the state to retain taxes on intangible property which would conflict with the direction of Article X, Section 4(c) of the constitution requiring these to be returned to the counties and other political subdivisions.

In view of the foregoing, it is our opinion that the blind pension fund does not share in the taxes collected on intangible personal property.

In addition to the reasons set forth above, there are certain principles of construction which require us to reach the same conclusion. In 16 C.J.S., Constitutional Law, Section 25, the following rule is set forth:

"When general and special provisions of a constitution are in conflict, the special provisions should be given effect to the extent of their scope, leaving the general provisions

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to control in instances where the special provisions do not apply."

The same construction must be applied to the statutory provisions. The special provisions relating to intangible personal property taxes are to be given effect over the provisions relating to taxation of property in general.

CONCLUSION

Therefore, it is the opinion of this office that the blind pension fund of the State of Missouri is not entitled to share in the intangible personal property tax collected by the state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General