



OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

March 24, 1975

OPINION LETTER NO. 69

Mr. Michael D. Garrett, Director
Department of Public Safety
Post Office Box 749
Jefferson City, Missouri 65101

Dear Mr. Garrett:

This letter is in response to your recent request for an opinion from this office on whether an assessment levied by a fourth class city against property owned by the state for the paving of the street adjoining such property is a valid assessment and should be paid. You stated in your request that the city of Dexter is a fourth class city and has issued a special tax assessment for street paving against the state of Missouri. This tax assessment has been assigned to Delta Asphalt, Inc., which has made demand for payment in the amount of \$437.50. The assessment is against property owned by the state of Missouri and used by the 1221st Transportation Company Missouri National Guard.

A similar question was once presented to this office involving a third class city. In Opinion No. 35 issued on August 24, 1950, to Mr. R. L. Groves (copy enclosed), this office held that unless the General Assembly, by express enactment or clear implication, has included property owned by the state as being subject to local assessment it is exempt therefrom. As authority for this proposition, this office relied upon Normandy Consol. School Dist. of St. Louis County v. Wellston Sewer Dist. of St. Louis County, 77 S.W.2d 477 (St.L.Ct.App. 1934), and City of Clinton to Use of Thornton v. Henry County, 22 S.W. 494 (Mo. 1893). These cases have not been overruled by any Missouri court; and, consequently, we consider them to still be the law in this state. It was our conclusion that third class cities did not have the authority to levy an assessment against state-owned property since such property was not within the contemplation of Section 6987 (now Section 88.510, RSMo 1969).

Section 88.703 relating to the power of fourth class cities to make special assessments for street improvement provides as follows in pertinent part:

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". . . and each lot or piece of ground abutting on such sidewalk, street, avenue, or alley, or part thereof, shall be liable for its part of the cost of any work or improvement provided for in sections 88.700 and 88.703, done or made along or in front of such lot or piece of ground as reported to the board of aldermen, and all lands, lots and public parks owned by any county or city, and all other public lands, all cemeteries, owned by public, private or municipal corporations; provided, that nothing in this section shall be construed to authorize any assessment against any cemetery lot, and all railroad rights-of-way fronting or abutting on any of said improvements shall be liable for their proportionate part of the cost of such work and improvements, and tax bills shall be issued against said property as against other property, and any county or city that shall own any such property shall out of the general revenue funds pay any such tax bill, and in any case where any county or city or railroad company shall fail to pay any such tax bill, the owner of the same may sue such county, city or railroad company on such tax bill and be entitled to recover a general judgment against such county, city or railroad company. . . ." (Emphasis added)

We fail to see where state property is, by express enactment or clear implication, included in land being subject to the assessment. In our opinion, the use of the words "all other public lands" refers to public lands owned by public, private, or municipal corporations, and we do not believe that this includes land owned by the state. In Thogmartin v. Nevada School Dist., 176 S.W. 473 (K.C. Mo.App. 1915), the court held that the phrase "all other public lands" in a provision relating to the power of third class cities to make special assessments did not include land owned by a school district. Furthermore, the section specifically requires counties and cities to pay such assessments out of their general revenue and makes them liable for suit if they do not. There is no such language for property owned by the state. We believe that had the legislature intended to make state-owned property liable for special assessment it would have done so by specific language.

Because state-owned property is neither by express enactment nor clear implication subject to such special assessment as provided

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for, it is our conclusion that this assessment issued by the city of Dexter is invalid and should not be paid.

Yours very truly,

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

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 35
10-23-50, Groves