

TAXPAYER - Definition of, for voting purposes.

March 29, 1935



Hon. J. B. Searcy,
Prosecuting Attorney,
Eminence, Missouri

Dear Sir:

A request for an opinion has been received from you under date of March 19, 1935, such request being in the following terms:

"I should like to have an opinion of the following questions pertaining to legal voters on certain questions at Annual School Meetings.

Is a man's wife entitled to vote on questions calling for legal taxpayers if she does not hold in her own name property either real or personal and who does not have a tax receipt in her own name?

Is a man who has only household goods a taxpayer even though he has not a receipt for having paid taxes? Is this man's wife also entitled to vote on questions where a legal taxpayer is a requirement to vote?"

Before answering the specific questions raised in your letter we shall refer you to certain decisions of courts of last resort of this State in which the term "taxpayer" is construed, because we believe that the enunciations of the principles there set out will point to the answers to all of your questions.

In the case of State ex inf. Bellamy v. Menengali, 307 Mo. 447, 270 S.W.101 (1924), an attempt was made to oust a school director on the ground that she was not a taxpayer who had paid a state and county tax within one year next preceding her election, in violation of a statute. The court analyzed the meaning of the term "taxpayer" and said:

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"In Webster's New International Dictionary, a taxpayer is defined as: 'One who pays a tax.' In Funk & Wagnall's New Standard Dictionary, "a taxpayer is defined as: 'One who pays any tax, or who is liable for the payment of any tax.' The evidence is clear and undisputed, that respondent on June 1, 1920, was the legal owner of the property heretofore described, and that it was not exempt from taxation."

In the case of *Castilo v. State Highway Commission*, 312 Mo. 244, 279 S.W.673 (1925), the status of the plaintiffs as taxpayers having a right to bring an injunction suit on their own behalf and on behalf of others similarly situated, was questioned, and the court in discussing the meaning of the term "taxpayer" said:

"In Black's Law Dictionary a taxpayer is defined as 'a person chargeable with a tax.' In *State ex rel. Sutton v. Fasse*, 71 S.W. (Mo.) 745, Goode, J., speaking for the St. Louis Court of Appeals, defines a taxpayer as 'a person owning property in the State subject to taxation and on which he regularly pays taxes.' This definition is adopted in *Pope's Legal Definitions*."

In deciding whether a person is a taxpayer or not so as to entitle him to some statutory right, it has been held that it makes no difference whether the property on which he claims to be a taxpayer is assessed in his name or not. In the case of *State ex rel. Circuit Attorney v. Macklin*, 41 Mo.App. 335 (1890), the court said:

"A person is not relieved from paying taxes on property owned by him, simply because it is erroneously assessed to another, nor is he under any legal obligation whatever to pay a tax on realty in which he has no interest, simply because it is assessed to him. The assessment of a tax creates no debt in the ordinary sense of the term. *City of Carondelet v. Picot*, 38 Mo. 125; *Peirce v. City of Boston*, 3 Met. 520; *Green v. Wood*, 7 Ad. & Ell. N. S. 178. If a person owns an interest in property and pays a tax thereon, he pays his tax regardless of the fact to whom the property is assessed."

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From the above cases it is apparent that one who owns property liable for taxation and who has paid or caused to be paid taxes thereon, is within the usual meaning of the term "taxpayer". The Menengali case referred to above concerned the status of a married woman as a taxpayer, and the court held that the fact that the property which had been paid for with her money and was in fact wholly or partially hers, was assessed in her husband's name, would not prevent her from being a taxpayer. This case makes it clear that whether a married woman is a taxpayer or not depends on whether she owns any taxable property of her own on which she causes taxes to be paid, regardless of the name in which the property was carried, and this case further shows that the fact that a husband owns property does not of itself make his wife a taxpayer.

In conclusion, it is our opinion that in construing a statute making the right to vote dependent upon whether or not one is a taxpayer, without any further qualifications, the answers to your questions are as follows: (1) A married woman is entitled to vote if she owns any property subject to taxation, regardless of whether it is held in her own name or not, (2) if household goods are subject to taxation and a tax has been paid on the same, the owner thereof is a taxpayer, and (3) if the owner of the goods referred to in (2) above was a married man, his wife is not a taxpayer unless she owns other goods which would make her a taxpayer. The possession of a tax receipt would only be one method of proof that a person was a taxpayer, and any other method of establishing the fact that the person claiming to vote was the owner of goods on which a tax had been paid would be likewise efficacious to qualify the claimant as a taxpayer.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

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