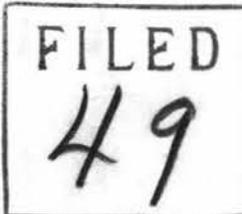


COUNTY COLLECTOR:
TAX LIEN:

Realty may not be held for taxes
on improvements separate from
the realty and so assessed.

November 23, 1951



11-28-51

Honorable Milton B. Kirby
Prosecuting Attorney of
Greene County
Springfield, Missouri

Dear Sir:

Reference is made to a recent request from your office for
an official opinion of this department, which request reads as
follows:

"The County Collector of Greene County,
Missouri, and the County Assessor of
Greene County, Missouri, have had a
question arise in connection with the
assessment of improvements on land made
separately from the assessment on the
land itself where ownership is in one
person for the land and in another
person for the buildings and improvements.

"These two county officers have requested
the following questions be referred to your
office for an expression of opinion:

"In event the taxes are paid regularly on
the land assessment by the owner thereof
and the taxes on the improvements or build-
ings become delinquent and are not paid
and before collection of such taxes on the
improvements is made or can be made the
building itself is destroyed or removed, does a

Honorable Milton B. Kirby

lien exist against the land for the taxes on the improvements?

"In other words, does the Collector hold the land for taxes on a building built thereon under a lease agreement under the terms of which the building remains under separate ownership and does not revert to the land owner at the expiration of the lease?

We infer from your request that the leasehold estate and improvements were assessed to one person and the land subject to the lease assessed to the lessor or owner thereof. You then inquire whether the land is subject to a lien for nonpayment of taxes on the improvements.

Under the tax laws of Missouri, real property and tangible personal property is assessed in the name of the owner. Real property is subject to a lien for the taxes imposed thereon, a valid assessment being a prerequisite to the imposition or enforcement of such lien. We are of the opinion that under the circumstances you have presented, assuming no provision in the lease regarding such taxes, the land cannot be held to be subject to taxes on the improvements for very obvious reasons. First, the improvements were assessed separate and apart from the realty. Second, the improvements do not constitute a part of the realty, for under the lease agreement, ownership of the improvements remained in the lessee and does not revert to the land owner at the expiration of the lease.

An almost identical situation was presented in the case of State ex rel. Ziegenhein v. Missouri Free School, et al., 162 Mo. 332. A building was erected on the leasehold estate by the lessee under the terms of a lease which provided that the building should not become a part of the realty but should remain the property of the lessee. It was sought to charge the realty with the taxes on the improvements which had not been assessed separately. The court in its opinion said:

"* * *It is thus evident that, as between the said Mission School and said Thompson, Thompson is the owner of the leasehold and building and is liable for the taxes thereon whether it is real estate or personal property, but as said in State ex rel. Thompson, 149 Mo. 445, before he can be compelled to respond for

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said taxes, his estate in said leasehold and building must first be assessed against him as the owner thereof. 'A valid assessment has invariably been held an essential prerequisite to the lawful exercise of the power of taxation in this State.' (State ex rel. v. Thompson, supra; Abbott v. Lindenbower, 42 Mo. 162; State ex rel. Wyatt v. Railroad, 114 Mo. 1.)"

See also Leach v. Goode, 19 Mo. 502, at page 503:

"When a lease is made, without any stipulation about taxes the landlord is bound to pay the taxes upon the property; but if the tenant, by the erection of buildings, which, by the terms of lease, continue his property, and which he is either authorized to remove, or is entitled to be compensated for by the landlord, enhances the taxes, the landlord is not bound to pay taxes upon the improvements.* * *"

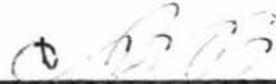
CONCLUSION

Therefore, it is the opinion of this department that where improvements are erected on realty by a lessee, under the terms of a lease, whereby the improvements remain the property of the lessee and such improvements are assessed in the name of the lessee and the land is not subject to a lien for delinquent taxes on such improvements.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

DDG:hr