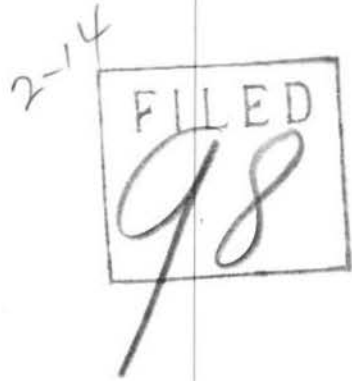


COUNTY COURT: Returning of taxes, by ~~the County Court,~~
REFUNDS: under illegal levy.
TAXATION:

February 13, 1940.

Honorable Conn Withers
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Mr. Withers:

This office is in receipt of your letter of February 10th, in which you ask for an opinion upon the following matters:

"The Birmingham Drainage District, a corporation under the drainage district law, located in Clay County, Missouri, has presented to the County Court of Clay County, Missouri, a petition for a return of certain taxes paid by the District.

"Since the action which may be taken by the Court on this petition would be subject to a review under the general county audit and therefore guided by your opinion I would appreciate your opinion concerning the proper action for the Court to take under the following facts:

"On June 1st, 1938, the said Birmingham Drainage District was the owner of certain real estate in Clay County, Missouri, purchased under a foreclosure of tax liens due the District in former years. As of the date of June 1st, 1938, said lands were assessed for state, county, school,

special road, road & bridge, and courthouse building taxes based upon said ownership on June 1st, 1938, for taxes due in the fall of 1939, and said taxes were levied and extended on the tax books and paid by the District on December 18, 1939.

"The District states that the non-taxability of these lands were overlooked by the assessor, the county court and the District.

"The taxes so paid have been distributed as to the portions paid to the state, schools and special road districts, but the District alleges that there is yet within the control of the Court the county tax, the road & bridge tax, and the courthouse building tax and prays that such taxes so in the control of the Court be returned to the District. The payment was not under protest.

"Should the prayer of this petition be granted?"

Section 6, Article X, of the Constitution of Missouri, provides as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. * * * "

Under the decision of the Supreme Court in the case of Grand River Drainage District vs. Reid, 111 S. W. (2nd) p. 151, land which the drainage district acquired to protect its lien for taxes, comes under this exemption and

and would not become subject to taxation while so held. The tax levy based on the assessment of the year 1938 for taxes due in 1939, for this reason, was an illegal levy and void.

Section 9981 R. S. Mo. 1929, provides as follows:

"Wherever, in any county in this state, money has been collected under an illegal levy, the county court of such county or counties is hereby authorized to refund the same by issuing warrants upon the fund to which said money had been credited, in favor of the person or persons who paid the same as shown by the collector's books: Provided, that should the person in favor of whom any warrant or warrants are issued be dead or unable to appear in person, then the same shall be paid to his heirs or legal representatives: Provided further, that said county court or courts may, in their discretion, refund, in addition to the money collected, interest which may have accrued upon the same, not to exceed six per cent. Provided further, that before any levy shall be considered illegal, it shall have been so declared by the supreme court of the state of Missouri: Provided further, that the provisions of this section shall only apply to those counties in which the money collected under said illegal levy is either in the county treasury or within the control of the county court:
* * * (Last underscoring ours)

Under your statement of facts, the payment of this illegal tax was a voluntary payment. The rule of Missouri regarding the voluntary payment of an illegal tax is set out in the case of *Brewing Co. v. St. Louis*, 367 Mo. 1. c. 376, as follows:

"It is a well-settled rule of law that money paid through a mistake of fact, may be recovered in an action for that purpose. (15 Am. and Eng. Ency. Law (2 Ed.), p. 1103, and cas. cit.) But this rule is subject to the qualification that the party paying must make the payment under a bona fide belief that the money is due. For if he did not believe he owed the money at the time he paid it, he can not recover it. (Idem, p. 1105.)

"This rule applies to payments to municipal corporations as well as to individuals. (20 Am. and Eng. Ency. Law (2 Ed.), p. 1158, and cas. cit.) But in all such cases the mistake must be one of fact and not of law, for all persons are deemed to have notice of the law. (Ibid.) An analysis of the cases relied upon by the plaintiff shows that they follow this rule, or else that there was an element of duress in the payment.

"The rule stated has been uniformly followed in this State in reference to all kinds of payments, including taxes, licenses, and claims, and the doctrine is firmly established that payments made with a full knowledge of all the facts constitute voluntary payments and can not be recovered, and that mistake or ignorance of law gives no right to recover. (Walker v. St. Louis, 15 Mo. l. c. 575; Christy's Admr. v. St. Louis, 20 Mo. 143; Claflin v. McDonough, 33 Mo. 412; Couch v. Kansas City, 127 Mo. 436; Teasdale v. Stoller, 133 Mo. 645; Douglas v. Kansas City, 147 Mo. l. c. 437; see, also, 22 Am. and Eng. Ency. Law (2 Ed.), pp. 609 and 613.)"

Hon. Conn Withers

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Feb. 13, 1940.

CONCLUSION

Therefore, it is the opinion of this department that the payment of the tax by the drainage district, having been made voluntarily, absent a ruling by the Supreme Court, a safe action for the county court is to refuse to grant the prayer of the petition.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

WOJ:LB