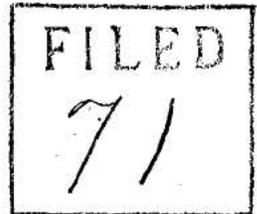


CONSTITUTIONAL LAW:
TAXATION & REVENUE:

Constitution doesn't require tax moneys from
intangibles to be deposited in State Treasury.

April 4, 1947



Honorable Edde B. Pope, Chairman
Committee on Taxation & Revenue
House of Representatives
Jefferson City, Missouri

Dear Mr. Pope:

Receipt is acknowledged of your request for an official
opinion, which reads:

"As Chairman of the Committee on Taxation
and Revenue of the House of Representatives,
I respectfully request an official opinion
on the following question:

"Does the Constitution require
that tax moneys collected under
the provisions of House Committee
Substitute for House Bill 868,
House Bills 869, 888, and 948 be
deposited in the State Treasury?

"It appears that Article IV, Section 15 and
Article X, Section 4 are pertinent to the
question."

The bills referred to in your letter of inquiry were enacted
by the 63rd General Assembly and are now in effect. H. C. S. H. B.
No. 868 provides for the levying and collecting of a property tax
on intangible personal property based upon the yield thereof.
House Bill No. 869 imposes a property tax on the accounts of
savings and loan and building and loan associations, the basis of
such tax being the taxable portion of the dividends declared
and credited to said accounts. The act specifically classifies
the accounts of the above named associations as intangible prop-
erty. House Bill No. 888 imposes a tax in the nature of a
franchise tax on banks and trust companies in Missouri according
to and measured by their net incomes, and House Bill No. 948
imposes a tax in the nature of a franchise tax on credit instit-
utions according to and measured by their net incomes.

Section 4(a), Article X of the 1945 Constitution, in part,
provides:

"All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property.* * * Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types."

The property subjected to taxation as provided in the aforementioned bills fall within the taxable classification of Class 3 in the above quoted constitutional provision. So it has been held in an official opinion submitted by this department on December 10, 1946, to Honorable M. E. Morris, Director of Revenue. In the second paragraph of page 1 of that opinion the following appears:

"Under Section 4(a) of Article X of the Constitution of 1945, property for the purpose of taxes is classified into three classes, namely Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The taxes derived under House Bills Nos. 868, 869, 888 and 948 are in Class 3, namely taxes on intangible personal property."

In answering your question we must now consider the other pertinent constitutional provision.

Section 4(c), Article X of the 1945 Constitution provides:

"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 per cent for collection, to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy." (Underscoring ours)

In reading the above section and giving to the language its plain and ordinary meaning, we believe it requires the taxes on Class 3 property (intangible property) to be assessed, levied and collected by the State, and that all of the taxes collected on intangibles, less 2% shall be returned to the counties and other political subdivisions of their origin. The taxes collected on intangible property cannot be considered as current income of the state which is subject to appropriation for public uses for section

4(c), supra, makes it mandatory that such tax moneys shall be returned to the counties and political subdivisions from whence the tax is paid. Consequently the taxes on intangible property collected by the state do not belong to the state but belong to the counties and political subdivisions of their origin and we believe that the state, in collecting such tax moneys, merely acts as trustee of the moneys for the counties and political subdivision to which such moneys belong.

A somewhat analogous situation would be when fees earned by a particular department of government are paid into the state, and that the cost of operation of such department is to be defrayed wholly from the fees earned. Under these circumstances the Supreme Court of Missouri has indicated that the state is merely a trustee of the moneys paid in equal to the cost of upkeep of the department. So the following appears in State ex rel. Gass v. Gordon, 266 Mo. 394, 181 S. W. 1016, l.c. 1023:

"* * * * *Whenever a statute creating a department of government of this state provides (or whenever an appropriation for the support of a department of government contains such a proviso) that the cost of operation shall be defrayed wholly from fees earned by such department and not otherwise, then clearly the state is, as to an amount equal to the cost of upkeep, a trustee merely of the moneys paid in, and the state's general revenue fund is entitled only to the surplus paid in to the state treasury after deducting expenses of the operation of such department. * * * * *" (Emphasis ours)

It is true that when the state collects the taxes on intangibles it necessarily receives them before they are returned to the counties or political subdivisions of their origin, therefore, the question arises whether or not such tax moneys can be returned to the counties and political subdivisions without first passing through

the State Treasury.

In this regard our attention is directed to Section 15, Article IV of the 1945 Constitution, which provides:

"The state treasurer shall be custodian of all state funds. All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. Such institutions shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping and payment of the deposits on demand of the state treasurer authorized by warrants of the state auditor. No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."
(Emphasis ours)

The above quoted section has its origin in Section 43, Article IV, and Section 15, Article X of the Constitution of 1875. Portions of each have been combined to form the section now appearing in our present Constitution with other minor changes.

Section 15, Article X of the 1875 Constitution in part provides:

"All moneys now, or at any time hereafter, in the State treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong, in such bank or banks as he may, from time to time, with the approval of the Governor and Attorney General, select, * * * such bank to pay a bonus for the use of such deposits not less than the bonus paid by other banks for similar deposits; and the same, together with such interest and profits as may accrue thereon, shall be disbursed by said Treasurer for

for the purposes of the state, according to law, upon warrants drawn by the State Auditor and not otherwise."

Section 43, Article IV of the 1875 Constitution in part provides:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. * * *"(Emphasis ours)

It will be observed that the underscored portion of the above quoted section and the first part of the second sentence in Section 15, Article IV of the 1945 Constitution are almost identical. In substance they both say that all revenue collected and moneys received by the state from any source whatsoever shall go into the State Treasury. Does it therefore mean that the tax moneys received by the State derived from taxing intangible property, which we believe the State holds as trustee for the counties and other political subdivisions, must be deposited in the State Treasury?

In construing a constitutional provision the construction given a similar provision in a former constitution or the federal constitution is strongly persuasive. *Star Square Auto Supply Co. v. Gerk*, 30 S. W.(2d) 447, 325 Mo. 968. Further, in the case of *Ludlow Saylor Wire Co. v. Wollbrinck*, 205 S. W. 196, 275 Mo. 339, the Supreme Court of Missouri said at Mo. l.c. 355:

"* * *The rule is firmly settled that the adoption in a later constitution of the words and context of another, which had been construed by a court of last resort, is presumed (in the absence of a contrary intention) to have been done to give the adopted words their adjudicated meaning.
* * *"

Consequently, in construing the provision in Section 15, Article IV of our present Constitution requiring all revenue collected and moneys received by the State to be deposited in the State treasury, we may look to the construction that the courts have given the similar provision appearing in Section 43, Article IV of the 1875 Constitution.

In the case of State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers College, 264 S. W. 698, 305 Mo. 57, the State Treasurer brought a mandamus proceeding to compel the Board of Regents to pay moneys received from insurance companies, as a result of fire losses, into the State Treasury. It was contended that under Section 43, Article IV of the 1875 Constitution requiring that moneys received by the State from any source whatsoever shall go into the Treasury the insurance moneys should be paid into the Treasury. The Supreme Court in defining the term revenue said at S. W. l.c. 700:

"* * *By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but, no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment, or, as aptly put by the respondent, state money means money the state, in its sovereign capacity, is authorized to receive, the source of its authority being the Legislature. * * * * *

Unless, therefore, it can be successfully contended, in harmony with well-recognized rules of interpretation, that the board of Regents of the college is the state, and that moneys received by it other than from appropriations is state money, the constitutional provision will afford no support to the relator's contention." (Emphasis ours)

In reading Section 15, Article IV of the 1945 Constitution we observe that there are three terms, which we believe are used interchangeably and for the same purposes. They are "revenue", "moneys" and "state funds", and therefore we believe that the definition of "revenue" in the above quotation is applicable and definitive of all three.

Consequently, under the Thompson case, supra, for revenue,

state funds or moneys received by the state to be deposited in the State Treasury they must be subject to appropriation for public uses and must be required to be paid into the State Treasury as intended by the Legislature. If these conditions are not present Section 15, Article IV of the Constitution has no application.

Turning again to the tax moneys received by the State from intangibles, let us ascertain whether or not the necessary conditions attach to bring such moneys within the purview of Section 15, Article IV, supra.

As aforesaid, we believe that it is clearly indicated that such tax moneys are not subject to appropriation for public uses for Section 4(c) of Article X makes it mandatory that such moneys shall be returned to the counties and political subdivisions of their origin. The failure to meet this condition alone would exempt intangible tax moneys from going into the State Treasury. Also a study of the bills in question fails to show a legislative intent that such moneys are state moneys and that they should be deposited in the treasury. Obviously the legislature hasn't considered them state moneys for the reason that they do not belong to the state.

Your attention is directed to the last sentence of Section 15, Article IV of the 1945 Constitution, which appears as new matter and which reads:

"* * * *No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

Under the above provision the State Treasurer shall only receive and be custodian of state funds or state moneys which the State receives in its sovereign capacity and may appropriate for public uses. To impose the duty on the State Treasurer to receive and be custodian of moneys belonging to the counties and political subdivisions would be in violation of the Constitution.

CONCLUSION

Therefore, it is the opinion of this department that the Constitution of 1945 does not require tax moneys collected under the provisions of House Committee Substitute House Bill No. 868, House Bill No. 869, House Bill No. 888 and House Bill No. 948 to be

Hon. Edde B. Pope

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deposited in the State Treasury because such moneys are not State moneys.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

RFT:mw