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TAXATION: Payment by a public agency of collection fees and interest on delinquent taxes.

In the absence of express statutory provision authorizing the tax collector to collect and the public agency to pay, a public agency of the State of Michigan is not responsible to a county treasurer for the payment of interest or collection fees on delinquent taxes paid on properties acquired by the State prior to the levy of the tax.

No. 4615

November 27, 1967.

Hon. Allison Green
State Treasurer
The Capitol
Lansing, Michigan

You have inquired whether the county treasurer under Act 206, Public Acts of 1893, as amended,¹ has authority to:

The facts giving rise to this question are as follows:

Prior to the date hereof, property located in the City of Lansing, was purchased by a public agency of the State of Michigan for a public purpose, to wit: the Capitol Development Complex. On the date title was conveyed to the State, the properties were free from any tax levies and tax liens. Thereafter, general property taxes were levied on the aforementioned properties. After the general property taxes levied on the State property described above became delinquent, the State transmitted the amount of the taxes without including interest and penalties and this sum was accepted. The question now arises whether under the circumstances described, the tax collector has the statutory authority to collect from the State of Michigan the interest and the four percent (4%) collection fee.

The letter opinion dated October 23, 1961, issued by my predecessor, the Honorable Paul L. Adams, is not applicable to the issue presented by the above fact situation for the reason that former Attorney General Paul L. Adams' opinion was limited to cases where acquisition by the Michigan State Highway Department occurred *after* the tax had been levied, not prior as in the instant case.

Collect from the State of Michigan interest and collection fees on delinquent taxes.

The general tax law provides that the following property shall be exempt from taxation:²

"STATE. Second, All public property belonging to the state of Michigan, . . ."

In addition to the statutory exemption set forth above, the Court in *People, ex rel. Auditor General v. Ingalls*, 238 Mich. 423, reaffirmed the well-recognized rule of jurisprudence that:

¹ C.L. 1948 § 211.1 et seq.; M.S.A. 1960 Rev. Vol. § 7.1 et seq.

² Section 7 of Act 206, P.A. 1893, *supra*, as last amended by Act 320, P.A. 1966, being M.S.A. Cur. Mat. § 7.7.

“. . . property owned by the State . . . is not subject to taxation unless so provided by positive legislation. . . .” p. 425 (Emphasis supplied)

In *Ingalls, supra*, the city of Detroit made a special assessment against the Michigan State Fair grounds and although repeated demands were made for payment, the State denied liability. The Court held that the special taxes levied by the city of Detroit against the State were without authority of law, and, therefore, illegal and void. In its opinion, the Court commented at page 425:

“. . . it is rather incongruous that the creature should have the right to tax its creator without its consent. . . .”

Out of this reason, the Court stated:

“. . . has grown an implied presumption that the State is exempt from all taxes unless the one asserting it can point to some legislation in support of it. . . .” (Emphasis supplied)

The legislature has amended the general property tax act, *supra*, and specifically Section 2 thereof to provide in pertinent part as follows:

“Notwithstanding any provision to the contrary in any law, when real property is acquired for public purposes by purchase or condemnation, all general property taxes, but not penalties, levied during the 12 months immediately preceding, but not including, the day title passes to the public agency shall be prorated in accordance with this paragraph (or section). The seller [sic] or condemnee is responsible for the portion of taxes from the levy date or dates to, but not including, the day title passes and the public agency is responsible for the remainder of such taxes. If the date that title will pass cannot be ascertained definitely and an agreement in advance to prorate taxes is desirable, an estimated date for the passage of title may be agreed to. In the absence of such agreement, the public agency shall compute the proration of taxes as of the date title passes. The question of proration of such taxes shall not be considered in any condemnation proceeding. As used in this paragraph (section) ‘levy date’ means the day on which taxes become due and payable. In addition to the portion of taxes for which the public agency is responsible under the provisions of this paragraph (section), the public agency is also responsible for all general property taxes levied on or after the date title passes and before the property is removed from the tax rolls.”³

The first sentence of the above portion of Section 2 of the general property tax law as amended in 1966 clearly refers to Section 1 of Act 207, Public Acts of 1965, being M.S.A. 1965 Cum. Supp. § 7.679(1), which provides:

“When real property is acquired for public purposes, general taxes shall be prorated to the date of closing when acquired by negotiation. When acquired by condemnation, proration shall be to the date compensation is made or secured.”

³ Section 2 of Act 206, P.A. 1893, *supra*, as last amended by Act 288, P.A. 1966, being M.S.A. Cur. Mat. § 7.2.

Reading these two provisions together it is clear that the legislature intended that whenever the state purchased or condemned real property for public purposes all general property taxes levied during the twelve months immediately preceding but not including the day title passes to the public agency shall be prorated but penalties that might be the obligation of the seller or condemnee were not to be prorated.

The last sentence of the quoted portion of Section 2 of the general property tax law as amended in 1966 imposed a duty upon the state for all general property taxes levied on or after the date title passes and before the property is removed from the tax rolls. The legislature did not make express provision that in addition to the payment of the general property tax the public agency should be responsible for the payment of interest and penalties. Express authority having been withheld, may such authorization be implied?

Tax statutes are to be strictly construed and when the State is involved, a presumption arises that the State shall be excluded from taxation unless specific provision is made to the contrary. Referring again to the leading case of *Ingalls, supra*, the Court cited therein on page 427 Cooley on Taxation (2d Ed.), p. 172, as follows:

“Some things are always presumptively exempted from the operation of general tax laws, because it is reasonable to suppose they were not within the intent of the legislature in adopting them. Such is the case with property belonging to the State and its municipalities, and which is held by them for governmental purposes. All such property is taxable if the State shall see fit to tax it; but to levy a tax upon it would render necessary new taxes to meet the demand of this tax, and thus the public would be taxing itself in order to raise money to pay over to itself, and no one would be benefited but the officers employed, whose compensation would go to increase the useless levy. It cannot be supposed that the legislature would ever purposely lay such a burden upon public property, and it is therefore a reasonable conclusion that, however general may be the enumeration of property for taxation, the property held by the State and by all its municipalities for governmental purposes was intended to be excluded, and the law will be administered as excluding it in fact. The grant, therefore, in general terms, to a city of the power to tax will not be held to confer power to tax State or county property.”

In addition to Cooley, the Court further relied on 4 Dillon on Municipal Corporations (5th Ed.), § 1396:

“The sound principle is that property owned by the United States, by a State or by a municipality for public uses, is not subject to be taxed *unless so provided by positive legislation.*” (Emphasis supplied)

In reference to interest, the general rule of law is to the effect that the State is not liable for the payment of interest in the absence of agreement or statutory authorization. This principle is evidenced by 49 *Am. Jur., States*, § 75, page 286, where it is stated:

“It is a well-settled general rule that a state is not liable for a payment of interest on its debts unless so bound by an act of the legis-

lature or by a lawful contract of its administrative or executive officers made within the scope of their duly constituted authority. The state is liable to pay interest only as it has bound itself by contract to do so. It cannot be held liable for interest upon an obligation drawn by a state officer, purporting to bear interest, when he is not authorized by law to stipulate for interest. The rule applies to all kinds of obligations of and claims against the state . . ."

In limited areas, legislative provision has been made in Michigan for the payment of interest by the State,⁴ but in reference to payment of interest on delinquent taxes, authorization is lacking.

Had it been the intention of the legislature to make tax collectors responsible for the collection of fees and interest from state agencies, it is reasonable to assume that the legislature by express provision would have made it the duty of the State to pay. Having failed to so provide, such a directive cannot be implied against the State of Michigan for the reasons set forth above.

Did the legislature specifically charge the tax collector with the duty to collect interest and the four percent (4%) fee from the sovereign?

Section 89 of the general property tax law reads in pertinent part:⁵

"To all taxes unpaid on the first day of March next after their assessment there shall be added interest at the rate of 1/2 of 1 per cent per month or fraction thereof, and to all taxes returned to the county treasurer there shall also be added a collection fee of 4 per cent. Such interest and collection fee shall be collected with such taxes, and the interest and taxes to be paid to the state, county and township, in proportion to their several rights therein.

" . . . "

As noted, tax statutes cannot be extended by implication or forced construction and are to be strictly construed. In *In re Dodge Brothers*, 241 Mich. 665, the Court said at page 669:

"Tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act within express authority conferred by law. *Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court.* The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer. . . ." (Emphasis supplied)

In conclusion, I fail to find legislation, nor has any been brought to my attention, authorizing a tax collector to collect interest and fees on delinquent taxes from the sovereign. Since this authority cannot be implied, the contention must fail.

It is my opinion that a public agency of the State of Michigan, under the circumstances as outlined herein, is not responsible to the county treasurer

⁴ See C.L.S. 1961 § 600.6455; M.S.A. 1962 Rev. Vol. § 27A.6455.

⁵ Section 89 of Act 206, P.A. 1893, *supra*; M.S.A. 1960 Rev. Vol. § 7.144.

for the payment of interest and collection fees on delinquent taxes and that the county treasurer has no obligation for the collection thereof.

FRANK J. KELLEY,
Attorney General.

671204.2

CONDEMNATION PROCEEDINGS: Qualifications of commissioners.
COUNTIES: Board of Supervisors, members of
LEGISLATURE: Members of

Members of the state legislature or the county board of supervisors may not serve as members of condemnation boards, being unable to meet the requirement of disinterestedness in the outcome of the proceedings in which the condemnation board participates.

No. 4600

December 4, 1967.

Honorable James N. Callahan
State Representative
The Capitol
Lansing, Michigan

You have asked my opinion on the question whether a state legislator or a member of a county board of supervisors can accept appointment to a condemnation board.

Article XIII, Section 2 of the Michigan Constitution of 1908, provided in pertinent part as follows:

“When private property is taken for the use or benefit of the public, the necessity for using such property and the just compensation to be made therefor, except when to be made by the state, shall be ascertained by a jury of twelve freeholders residing in the vicinity of such property, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law: *Provided*, That the foregoing provision shall not be construed to apply to the action of commissioners of highways or road commissioners in the official discharge of their duties.”

This section has been omitted from the Michigan Constitution of 1963, which, at Article X, Section 2, provides in part as follows:

“Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. . . .”

Certain statutes as enumerated hereinafter still constitute “provision by law” whereunder qualified individuals may serve as members of boards of commissioners in condemnation proceedings. These statutes are as follows:¹

¹ We omit discussion of statutes dealing with the condemnation powers of railroad corporations, depot corporations and power and supply companies as not within the scope of the opinion request.