

JUNE 27, 1957

HONORABLE DWIGHT R. G. PALMER
State Highway Commissioner
Trenton, New Jersey

MEMORANDUM OPINION—P-23

DEAR COMMISSIONER PALMER:

You have requested our opinion concerning the liability of the State of New Jersey for real property taxes in cases where the Highway Department acquires land for highway purposes by (1) eminent domain and (2) purchase. For the reasons hereinafter stated, it is our opinion that the State of New Jersey is not liable for real property taxes which accrue, in the case of condemnation, after the date of taking possession or payment of compensation, whichever is earlier, or, in the case of purchase, after the date title passes. We are of the further opinion that non-liability in the stated circumstances does not depend upon acquisition of such land prior to January 1 of the taxable year.

It is firmly established in this jurisdiction that in the absence of a clear legislative expression that property of the State, or its political subdivisions, shall be taxed, such property is excluded from the operation of general tax statutes. *Trustees of Public Schools v. City of Trenton*, 30 N.J. Eq. 667 (E. & A. 1879); *Township of Hanover v. Town of Morristown*, 4 N.J. Super. 22, 24 (App. Div. 1949). The foregoing principle was stated by Mr. Justice Depue, speaking for the Court of Errors and Appeals in the *Trustees of Public Schools* case, *supra*, as follows:

"The immunity of the property of the state, and of its political subdivisions, from taxation, does not result from a want of power in the legislature to subject such property to taxation. The state may, if it sees fit, subject its property, and the property owned by its municipal divisions, to taxation, in common with other property within its territory. But inasmuch as taxation of public property would necessarily involve other taxation for the payment of the taxes so laid, and thus the public would be taxing itself in order to raise money to pay over to itself, the inference of law is that the general language of statutes prescribing the property which shall be taxable, is not applicable to the property of the state or its municipalities. Such property is, therefore, by implication, excluded from the operation of laws imposing taxation, unless there is a clear expression of intent to include it. *Cooley on Taxation*, 131. Hence crown lands, and the property of the state, or its political subdivisions, are not taxable under general statutes providing for taxation." 30 N.J. Eq. at p. 681.

An examination of the applicable statutes indicates that there has been no such clear expression of intent on the part of the legislature to permit the taxation of real property used for highway purposes for any period subsequent to its acquisition by the State Highway Department, whether such acquisition is by condemnation or purchase. The tax statutes dealing with the question of assessment and exemption of real property read in pertinent part as follows:

R.S. 54:4-1. "All property real and personal within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually under this

chapter at its true value, and shall be valued by the assessors of the respective taxing districts. * * * All property shall be assessed to the owner thereof with reference to the amount owned on October first in each year * * *."

R.S. 54:4-2.1. "All lands, except riparian lands and lands excepted by section 54:4-2.2 of this Title, owned by or held in trust for the State, which are used or to be used for State purposes, whether the title thereto be in the name of the state, or any board, commission or corporation, shall be taxed in the municipality wherein such lands are situate, for municipal and local school purposes, unless the aggregate area of such lands is less than nine per centum (9%) of the total area of the municipality after deducting from the total area of the municipality so much thereof, if any, as is exempt from taxation because it comprises State forests, State parks, riparian lands, lands held by the State Board of Proprietors or lands held for highway, bridge or tunnel purposes or is exempt from taxation under the provisions of article one of chapter eight of the Title 'Conservation and Development—Parks and Reservations' (§13:8-1 et seq.), or sections 54:4-5 or 54:4-6 of this Title. Said lands shall be assessed at the same value at which they were assessed at the time they were acquired by the State. * * *"

R.S. 54:4-2.2. "The provisions of section 54:4-2.1 of this title shall in no way affect the provisions of article 1 of chapter 8 of the title Conservation and Development—Parks and Reservations (§13:8-1 et seq.), or sections 54:4-5 or 54:4-6 of this title; and no taxation of lands mentioned in said article 1 of chapter 8 or in said sections 54:4-5 or 54:4-6 shall be made under the provisions of said section 54:4-2.1, and no taxation shall be made under said section 54:4-2.1, of state forests, state parks, riparian lands, lands held by the state board of proprietors or lands held for highway, bridge or tunnel purposes."

R.S. 54:4-3.3. "Except as otherwise provided by article one of this chapter (§54:4-1 et seq.), the property of the State of New Jersey; and the property of the respective counties, school districts and taxing districts used for public purposes, or for the preservation or exhibit of historical data, records or property; and property acquired by the municipalities through tax title foreclosure or by deed in lieu of foreclosure, if not used for private purpose, shall be exempt from taxation under this chapter, but this exemption shall not include real property bought in for debts or on foreclosure of mortgages given to secure loans out of public funds or out of money in court, which property shall be taxed unless devoted to public uses. The lands of counties, municipalities, and other municipal and public agencies of this State used for the purpose and for the protection of a public water supply, shall be subject to taxation by the respective taxing districts where situated, at the true value thereof, without regard to any buildings or other improvements thereon, in the same manner and to the same extent as the lands of private persons, but all other property so used shall be exempt from taxation. * * *"

In addition, it is provided by R.S. 54:5-6 that:

R. S. 54:5-6. "Taxes on lands shall be a lien on the land on which they are assessed on and after the first day of January of the year for which the taxes are assessed, and all interest, penalties, and costs of collection which

thereafter fall due or accrue shall be added to and become a part of such lien."

It may be contended that the effect of R.S. 54:4-1, requiring property to be assessed to the owner thereof as of October 1 preceding the taxable year, and of R.S. 54:5-6, creating a lien upon the land as of January 1 of the taxable for such year's taxes, is to impose a tax liability upon the land if the latter is acquired after such dates from a non-exempt owner, regardless of whether the acquisition is by the otherwise tax-exempt sovereign. A review of the authorities, however, reveals that neither R.S. 54:4-1 nor R.S. 54:5-6 has the effect of withholding or destroying the statutory and common law exemption from local taxation enjoyed by the sovereign.

In *Edgewater v. Corn Products Refining Co.*, 136 N.J.L. 220 (Sup. Ct. 1947), modified and affirmed 136 N.J.L. 664 (E. & A. 1948), a suit in which a municipality and a condemnee sought an adjudication of the condemnee's liability for real estate taxes for the year 1942, during which the property in question had been condemned by the United States, it was held that the condemnee, which had paid one-half of the 1942 taxes in advance, was entitled to a refund of two months' taxes for the reason that the condemnation, including acquisition of title, took place on May 2. The municipality argued that because the property was non-exempt on the assessment date, i.e., October 1, 1941, such non-exempt status should continue to apply to the entire year 1942, the year for which the assessment was made. It therefore urged that it was entitled to a full year's taxes out of the award paid into court by the United States.

In rejecting the municipality's contention the court pointed out that when an award is paid into court all claims against the land, including tax liens, are payable out of the award. It held that a municipality is entitled to be paid only such proportion of the taxes for the current year as the number of days between January 1 and the acquisition date bears to the full calendar year, citing R.S. 54:4-56. The latter statute provides for the apportionment of taxes between buyer and seller and condemnor and condemnee based upon the proportionate part of the tax year during which the parties held the property.

To the same effect as the *Corn Products* decision is *New Jersey Highway Authority v. Henry A. Raemsch Coal Co.*, 40 N.J. Super. 355 (Law Div. 1956), in which the court, in an opinion by Judge (now Justice) Weintraub, again held that a tax claim based on the non-exempt status of the owner on the assessment date can be satisfied out of an award in condemnation only up to the amount attributable to the owner.

We point out that under *Milmar Estate v. Borough of Fort Lee*, 36 N.J. Super. 241 (App. Div. 1955) the decisive date to determine the amount of tax attributable to the owner upon a condemnation by a governmental authority is the date of entry into possession by the condemnor. In that case the state, by the Highway Commissioner, instituted condemnation proceedings in June, 1953 and agreed with the condemnee that it would take possession on September 30, 1953. On March 8, 1954 the State paid the amount of the award into court. The court, before releasing the condemnee's share of the award, demanded proof that local tax claims had been satisfied. The municipal tax collector refused to give such proof unless the first half of 1954 taxes were paid. Such taxes were paid under protest by the condemnee, whereupon it brought an action against the municipality to recover them.

In affirming a judgment for plaintiff the Appellate Division held that *for pur-*

poses of determining the taxability of the state's property under R.S. 54:4-1 its title would be deemed to relate back to the date it obtained possession, i.e., September 30, 1953. It assumed for purposes of the case that legal title to the land did not pass until March 8, 1954, when payment into court was made. In arriving at its decision the court specifically refused to pass upon the effect of R.S. 54:4-56 on the facts of the case. Indeed there was no occasion to apportion taxes under R.S. 54:4-56 since the court held that the municipality was not entitled to any 1954 taxes. Apparently no question was raised with respect to 1953 taxes from October 1 to December 31. R.S. 54:4-1, of course, may be read to fix the status of property with respect to exemption or non-exemption as of October 1 of the year prior to the taxable year. It specifically provides that "all property shall be assessed to the *owner* thereof with reference to the amount owned on October 1 in each year * * *." (emphasis supplied). Nevertheless, the court's application of the doctrine of relation back in the *Milmar Estate* case plainly declined to view legal ownership on the tax assessment date as decisive.

It is clear from the *Corn Products* case that where title to land is acquired by eminent domain the municipality's recovery of real property taxes out of the award is limited to that proportion of the year's taxes which is attributable to the prior owner, i.e., the condemnee. It follows, therefore, that a condemnee cannot acquire rights against a governmental condemnor under the apportionment statute, R.S. 54:4-56, on account of taxes attributable to any period following condemnation, whether such taxes have been paid or not.

While *Corn Products* did not deal with the situation in which a municipality seeks payment of taxes from the condemning sovereign it is helpful here since it recognizes that the status of property on the assessment date is not controlling insofar as concerns tax liens which have not been perfected at the time of condemnation. The recovery of such liens out of the award is, as noted, limited to that part of the year during which the condemnee had title. The Court pointed out that upon condemnation the lien on the land is transferred to the award and that such lien is limited to the taxes attributable to that part of the year during which the condemnee held title.

During the time involved in the *Corn Products* case, taxes did not become a lien on property until December 1 of the year in which they were due. Since the enactment of L. 1944, c. 247, however, R.S. 54:4-6 provides that such taxes become a lien on January 1 of the year for which they are assessed. The *Corn Products* decision therefore did not squarely deal with the situation where a lien has been perfected at the time of condemnation, nor does the *Milmar Estate* case concern itself with this matter, since the court there invoked the doctrine of relation back.

While there are no reported New Jersey cases which deal directly with this point, it is clearly the majority view in other jurisdictions that municipal liens become void when the state acquires title, whether by condemnation or purchase. See, for example, *Halvorsen v. Pacific Company*, 22 Wash. 2d 532, 156 P. 2d 907 (Sup. Ct. 1945), and *State ex rel. Hoover v. Minidoka County*, 50 Idaho 419, 298 P. 366 (Sup. Ct. 1931). In the *Halvorsen* case the court held that liens upon lands subsequently acquired by the state become merged in the title and are discharged. It further stated that such liens are not revived when the property passes into private ownership again, a point which it is not necessary to anticipate here. In the *Hoover* decision it was held that taxes and tax liens upon lands procured by the state are discharged and become nil by virtue of the state's constitutional exemption from taxation. See

also 158 A.L.R. 563. in which a lengthy annotation discusses the many situations in which courts have struck down tax and other governmental liens upon the acquisition of title by the state.

As to cases in which you acquire land for highway purposes by purchase, we understand from you that it is the practice of the Highway Department to pay off municipal taxes up to the date of passing of title. The municipality affected is therefore placed in as good a position as where the state acquires property by condemnation. We are of the opinion that a municipality should acquire no greater rights against the state in the case of a purchase than it would in the case of condemnation. The courts have consistently treated tax liens the same whether the property they affect has been condemned or purchased. 158 A.L.R. 563. In *United States v. City of East Orange*, 78 F. Supp. 371 (U.S.D.C., D.N.J. 1948), it was held by Judge Smith that where the United States purchased land in New Jersey between the assessment date and the lien date there was no liability for taxes for the year for which they were assessed. The court said, at 78 F. Supp. 372:

“The property of the United States, held for public purposes, is immune from taxation by the state. The tax lien in question is voided and may not be enforced against the United States.”

Although the United States had acquired title prior to the lien date the defendant municipality relied on the status of the property on the assessment date as fixing the tax liability for the following year. This contention was summarily rejected by the court.

The only New Jersey authority which can be urged to be out of line with the foregoing principles is *Jersey City v. Montville*, 84 N.J.L. 43 (Sup. Ct. 1913), affirmed 85 N.J.L. 372 (E. & A. 1913). The court there held that property purchased in one municipality by another municipality for water purposes was not exempt from taxation for the year following the assessment date since on the assessment date title had been held by a non-exempt owner. In our opinion the holding of that case is inapplicable here. Moreover, although *Montville* has never been explicitly overruled, it has been rejected by implication in subsequent decisions. The *Montville* decision was relied upon by the municipality in *Edgewater v. Corn Products Refining Co.*, *supra* at 136 N.J.L. 666. The case is in any event distinguishable from the facts here presented in that the governmental unit there claiming exemption was a municipality and not the state.

For the reasons above stated, it is our opinion that the State of New Jersey is not liable, in the case of condemnation, for real property taxes which accrue after the date of taking possession or payment of compensation, whichever is earlier, nor, in the case of purchase, after the date title passes.

Very truly yours,

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