

TAXATION:
SCHOOLS:

In computing the average school levy for railroads and other public utilities all districts including fractional districts partially within the county should be considered. If there has been a partial failure to levy school taxes, such may be carried in a supplemental tax book and collected as other taxes.



November 18, 1952

11-18-52

Mr. Charles A. Weber
Assistant Prosecuting Attorney
Ste. Genevieve, Missouri

Dear Sir:

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

"For some years in this County (Ste. Genevieve) there seems to have been some discrepancy between the annual calculations made by the County Superintendent of Schools and the amount of tax that was actually turned over to him for school purposes. In determining the annual calculations, the Superintendent of Schools used all districts, including fractional districts with schools outside of the County. Through this same method, the board arrived at the estimate in determining the average levy for railroads and other public utilities. However, when these utilities were assessed, the average levy was somewhat lower than the amount called for in the estimates presented to the County Court by the School Board.

"I have read an opinion given by your office in 1946 which in part states that the estimates given to the County Court by the School Board are final and cannot be altered or changed by the County Court.

"The question, however, is this. 'In determining the average levy, as set out in the estimates, should the board arrive at this figure by using all districts, including fractional districts with schools outside the County?'

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"If the answer to this interrogative is in the affirmative, and an arbitrary levy was used in determining an average rate, will an action lie against these utilities for the difference in the amount that they should have paid and the amount that was actually paid? If an action will lie, what is the basis for this action?"

Your first question would appear to be as follows:

How is the rate of taxation for school purposes to be levied against railroads and public utilities determined? This question is purposely phrased in broad terms to include your specific question as to whether school districts lying partially within the county should be considered in arriving at the average rate.

Since the rate of taxation of railroads for school purposes depends upon the local rate of taxation within the districts we will here set out how this local rate is determined.

Section 165.077, RSMo 1949, requires the board of directors of each school district to forward to the county superintendent of schools an estimate of the amount of money to be raised by taxation to sustain the school or schools for a specified period and the rate required to produce said amount. Said section reads as follows:

"The board of directors of each school district shall, on or before the fifteenth day of May of each year, forward to the county superintendent of schools an estimate of the amount of money to be raised by taxation for the ensuing school year, and the rate required to produce said amount, specifying by funds the amount and rate necessary to sustain the school or schools of the district for the time required by law or authorized by the qualified voters of the district, to meet principal and interest payments on the bonded debt of the district, and to provide such funds as may have been ordered by the qualified voters of the district for other legitimate district purposes, including the purchase of school building sites, buying or erecting school buildings, repairing and furnishing such buildings, and providing foot bridges across running streams."

The duties of the county superintendent of schools upon receipt of such estimates is specified in Section 167.040, RSMo 1949, as follows:

"* * *he shall receive, and, if properly made, approve estimates and enumeration lists and turn same over to the county clerk; * * *."

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The county superintendent of schools under this section has no power to make estimates or fix tax rates but his power only extends to approving the estimates if properly made, and then to turn them over to the county clerk. The duties of the county clerk on receiving the estimates from various districts is set out in Section 165.083, RSMo 1949, and reads in part as follows:

"Upon receipt of the estimates of the various districts, the county clerk shall proceed to assess the amount so returned on all taxable property, real and personal, in each district, as shown by the last annual assessment for state and county purposes, including all statements of merchants in each district of the amount of goods, wares and merchandise owned by them and taxable for state and county purposes; provided, the levy thus extended shall not exceed in any one year the following rates on the hundred dollars assessed valuation; * * *."

From the foregoing it is seen that the rate of taxation for school purposes within a district is fixed by the district board with specified limits approved by the county superintendent of schools and such taxes levied by the county clerk.

In regard to districts lying partly within the county, we refer you to Section 165.190, RSMo 1949, which provides that the same procedure as above outlined is true in regard to such partial districts, except that the estimates are turned over directly to the county clerk by the clerk of the school district and need not be approved by the county superintendent of schools. The county clerk would then proceed to levy a tax upon that portion of the district within the county in the same manner as where the district lies wholly within the county.

Section 165.190 reads in part as follows:

"4. In all school districts divided by county lines it shall be the duty of the clerk of such school district to report to the clerk of each county in which such district is in part located the number of persons of school age residing in that part of said school district lying within the respective counties, together with the amount of money necessary to maintain the school, and such other funds as it is necessary to raise by taxation in the same manner as is provided in districts not so divided. And it shall be the duty of the county court and county clerk of each county in which such district is located to apportion to said district such part of the

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public school funds as the enumeration of such parts of said district shows it to be entitled to, and all moneys collected for school purposes as taxes on property within such district shall be paid to said district the same as if it lay entirely within one county."

The rate of taxation of railroads and utility companies for school purposes is wholly within the jurisdiction of the county court. Section 151.150 reads in part as follows:

"1. For the purpose of levying school taxes, and taxes for the erection of public buildings, and for other purposes, in several counties of this state, on the roadbed, rolling stock and movable property or railroads in this state, the several county courts shall ascertain from the returns in the office of the county clerk the average rate of taxation levied for school purposes, and also the average rate of taxation levied for the erection of public buildings, and for other purposes, each separately, by the several local school boards or authorities of the several school districts throughout the county.

"2. Such average rate for school purposes shall be ascertained by adding together the local rates of the several school districts in the county and by dividing the sum thus obtained by the whole number of districts levying a tax for school purposes, and shall cause to be charged to said railroad companies taxes for school purposes said average rate on the proportionate value of said railroad property so certified to the county court by the state tax commission, under the provisions of this chapter, and the said clerk shall apportion the said taxes for school purposes, so levied and collected, among all the school districts in his county, in proportion to the enumeration returns of said district."

* * * * *

Section 153.030, RSMo 1949, provides that utility companies shall be taxed in the same manner as provided by law for the taxation of railroads therefore, such companies will be treated and considered along with the railroads.

Under Section 151.150, supra, the average rate of taxation of railroads and utility companies is computed by adding together the rate of taxation of each of the several school districts levying a

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tax under Section 165.077 and 165.083 and dividing the total by the number of districts. We are of the opinion that in arriving at the sum of the tax rates, the tax rate, as computed in a portion of a district lying partially within the county should be included, and the district lying partially within the county should be included in the total number of districts in arriving at the average rate. Only in this way can an average rate be established for all districts or parts thereof within the county and only in this manner could the tax rate be equalized throughout the county.

To be sure the average rate thus established will be less than the local rate for school purposes in some districts, such is the inevitable result of such a computation. However, the method of computation as outlined in Section 151.150 is mandatory and a discretionary rate of taxation cannot be adopted.

Assuming that a rate of taxation of railroads and utility companies was established other than under the above outlined procedure and was less than the rate which would have been obtained under the correct method, you next inquire if an action will lie against the railroads and utility companies for the amount they should have paid. In answer to this inquiry we refer you to Section 137.300, RSMo 1949, which provides that if there has been a failure to levy school taxes, or any portion thereof, the same may be listed in a supplemental tax book and collected as other taxes. Said section provides as follows:

"When for any cause there has been a failure to levy the state, county, school or other taxes, of any portion thereof, or to extend and authenticate the same for the use of the collector, or to make out and deliver to the collector a proper tax book for the collection of the same, as required by law, in any county for any year or years, the clerk of the county court of such county for the time being, when so required for such state taxes by the state tax commission, and for such county, school or other taxes by the county court, shall make a supplemental tax book for such year or years. Such supplemental tax book shall be made upon the assessments for the year or years for which the taxes should have been levied, or where there has been a failure to assess the property, upon the assessment made as required by section 137.295, the taxes for each year to be in a separate book and to be levied for such state, county, school and other taxes, or portions of the same, as had failed to be levied and collected at the proper time. In making said supplemental tax book, and in all subsequent proceedings thereon, the

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county court, clerk of the same and the collector shall be governed by the same law as is now or at the time then being or may be in force for the same duties, and shall receive the same compensation as is now or at the time then being or may be provided by law for similar duties; provided, that whenever such taxes or any portion of them shall have been paid upon defective or illegal tax books, the amounts so paid shall not be charged in such supplemental tax books, and when any such taxes have been paid in full upon any property, the same, with the description of the said property and the name of the owner thereof, shall be omitted from such supplemental tax book."

CONCLUSION

Therefore, it is the opinion of this department in arriving at the average rate of taxation of railroads and utility companies the rate of taxation in portions of school districts lying partially within the county should be considered.

We are further of the opinion that in the event that there has been an erroneous levy of taxes against railroads and utilities for school purposes due to an erroneous computation of the rate of taxation and such levy was less than that which should have been collected, the difference may be carried in a supplemental tax book as provided in Section 137.300 and collected as other taxes.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
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