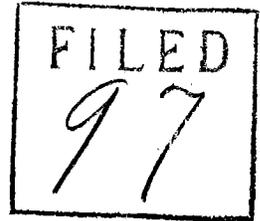


SCHOOLS: Organization of common school districts into city, town or village districts.

November 7, 1946



Honorable Jay B. Wilson
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an official opinion from this department on the following statement of facts:

"In Platte County, Missouri, in an 8th grade rural school District, (I probably should have said within the aforesaid school district) in a thickly populated part of the same, there has been, within the last two or three months, this thickly settled part has been incorporated as a village containing about 240 acres in area and a valuation of about \$90,000.00. Fourteen of the twenty-three pupils now enrolled in said District are from the aforesaid incorporated village. The valuation of the whole district, including the aforesaid incorporated village is \$370,000.00.

"So, the question is, does the fact that the incorporation of the aforesaid village remove or change the relation of the said village to said school district in the matter of taxation and so forth. In other words does it remove or take away this village from said school district for all purposes?"

It appears from this request that the population of the common school district has so increased that a village has been incorporated within the boundaries of the district and that the question arises as to whether or not the incorporation of the village in the common school district would automatically change the common school district to that of a village or city district.

I note from your letter that you particularly refer to the question as to whether or not this would affect the matter of taxation of property in the district. It will be

assumed that you refer to the matter of school taxes. Section 10323 R. S. Mo. 1939 relates to the classification of school districts in this state, and it reads as follows:

"The public schools of this state are hereby classified as follows: First, all districts having only three directors shall be known as common school districts; second, all districts outside of incorporated cities, towns and villages, which are governed by six directors, shall be known as consolidated school districts; third, all districts governed by six directors and in which is located any city of the fourth class, or any incorporated town or village, shall be known as town school districts, and fourth, all districts in which is located any city of the first, second or third class shall be known as city school districts."

It appears from your letter that the district, as it now exists, comes within the classification of a common school district with three directors. The fact that a part of a common school district is incorporated into a city or village does not automatically change the common school district or any part of it to a city or village district. The procedure for organizing a city or village school district out of a common school district is set out in Section 10467 R. S. Mo. 1939, which reads as follows:

"Whenever it may be desired to organize a common school district or consolidated school district into a town or city school district, with special privileges granted under this article, the board of directors shall, upon the reception of a petition to that effect, and signed by ten qualified voters who are resident taxpayers of the district, submit the proposition at an annual or special meeting, giving notice of such meeting as provided by section 10418. The order of business at such meeting shall be as follows:

"First--To organize as a town or city school district, those voting for the organization shall have written or printed on their ballots 'For organization,' and those voting against the organization shall have written or printed on their ballots 'Against organization;' and each person desiring to vote shall advance to

the front of the chairman and deposit his ballot in a box to be used for that purpose. When all present shall have voted, the chairman shall appoint two tellers, who shall call each ballot aloud and the secretary shall keep a tally and report to the chairman, who shall announce the result; and if a majority of the votes cast are 'for organization,' the chairman shall call the next order of business.

"Second--To elect six directors, as follows: Two shall be elected for three years, two for two years and two for one year, and each director shall be elected separately and the result announced in the manner prescribed for organization. If said election is held at a special meeting, from then until the next annual meeting shall be taken as one year, so far as relates to the terms of the directors elected. The directors chosen must comply with the requirements of section 10470 of this article. The chairman and secretary of such meeting shall keep a record of the proceedings thereof and turn the same over to the board of education of such district, to be entered upon its records by the clerk of such district."

The case of State ex rel. School District of Affton vs. Smith, State Auditor, 80 S.W. (2d) 858, was before the Missouri Supreme Court on the question of registration of the bonds of a town school district which was supposed to have been organized from a common school district. In that case, the court refused to issue a writ of mandamus requiring the State Auditor to register the bonds of this district because the record failed to show that the school district which desired to issue the bonds had followed the procedure prescribed in Section 10467 for the organization of town or city school districts out of common school districts.

On the question of taxes to be levied and collected in the various school districts of the state, we find that Senate Bill 208, passed by the 63rd General Assembly and approved on January 25, 1945, re-enacted what was formerly Section 10347, and said Section as re-enacted 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."

By Section 10395 of said Senate Bill, the duties of the county clerk, with respect to assessing of the school taxes, are provided as follows:

"On 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; for sinking fund, forty cents; for interest fund, the number of cents necessary to produce the amount required to pay the interest on the bonded debt of the district; for other funds, eighty-nine cents in the City of St. Louis, one dollar in other districts formed of cities and towns, sixty-five cents in all other districts, and such additional rate or rates in each case as may have been legally authorized by the qualified voters of the district; all of which shall be extended by the county clerk upon the general tax books of the county for said year in separate columns arranged for that purpose; and the county

clerks shall list the names of all persons owning any personal property who do not reside in any school district, and the value thereof; also, list all lands and town lots in any territory not organized into a school district, and shall levy a tax of sixty-five cents on the hundred dollars valuation on all such taxable property, said taxes to be collected as other taxes and distributed as provided in Section 10390; and it shall be the duty of the county assessor in listing personal property to take the number of the school district in which the taxpayer resides at the time of making his list, to be by him marked on said list, and also on the personal assessment book, in columns provided for that purpose." (Emphasis ours.)

It will be noted by this section that the duty of listing personal property to the number of the school district in which a taxpayer resides at the time of making the list is imposed upon the county assessor. Under this section, when the assessor of the county lists the personal property of the taxpayers residing in the common school district, which includes the incorporated village, it is his duty to list the property of the residents of the district in the common school district. Such residents then would pay school taxes on the rates extended for that common school district. From the foregoing provisions of the statutes, it will be seen that the incorporation of a portion of a common school district into a village district does not change the status of the incorporated portion of such common school district to that of a village or town district until the residents of the district have followed the procedure prescribed by Section 10467 R. S. Mo. 1939 hereinabove set out.

CONCLUSION

Therefore, it is the opinion of this department that the fact that a village is formed in a common school district does not take away the status of the taxpayers of such village for paying school taxes to the common school district until such village is incorporated into a town or village district as is prescribed by Section 10467 R. S. Mo. 1939.

Respectfully submitted,

APPROVED:

TYRE W. BURTON
Assistant Attorney General

J. E. TAYLOR
Attorney General

THUR. VII