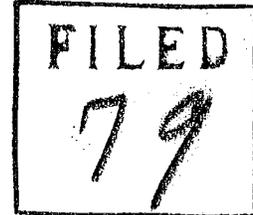


SCHOOL DISTRICTS: Duties of county clerk and county assessor
COUNTY CLERK: respective when boundary line between school
COUNTY ASSESSOR: districts is in dispute.

October 7, 1954



Honorable J. B. Schnapp
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department, reading as follows:

"The county clerk of this county has requested that I secure from you an opinion advising him and the assessor what action they should take under the following facts, to-wit:

"On or about May 31, 1954 the county assessor made his return of the assessor's book to the county court pursuant to Section 137.245 R.S. Mo. 1949.

"A certain area of land all within Madison County is claimed by School District C-2 to lie within its boundary and the same area is claimed by School District 14 to lie within its boundary.

"The assessor's book for 1954 for lands designated the area to be in School District C-2 but his book assessing personal property designated the property of persons living within the said area as being situated in School District 14.

"On or about June 11, 1954, and subsequent to the assessor making the aforesaid return of this book for 1954, a group of qualified voters residing in the disputed area petitioned School District 14 and alleged that

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the aforesaid area was unorganized territory and petitioned that the said area be attached to School District 14, as provided in Section 165.163 R.S. Mo. 1949. School District 14 approved the petition and certified its action to the county clerk.

"The county clerk now proposes after receipt of the certified petition of School District 14 to extend the land levy covering this alleged unorganized territory to School District 14. School District C-2 is objecting to this action claiming that they are entitled to have the levy on the real estate extended to the credit of their district and to also have the personal property levy extended to the credit of their district.

"The disputed area has been assessed in first one and then the other of the two aforesaid districts down the years, but the realty and personalty were both assessed in School District C-2 in 1953.

"Both school districts complied with Section 165.077 R.S. Mo. 1949 by submitting to the superintendent and he to the county clerk their respective estimates for 1954.

"A suit is being instigated by one of the districts in the circuit court to try, determine and quiet the boundary between School District C-2 and School District 14.

"The area in dispute involves surface rights in and to the land only. The so called underground rights or mineral rights are owned by a mining company and are assessed in School District C-2 in 1954 and have never throughout the years of dispute over the surface rights appeared on the assessor's books for any other school district.

"The County Clerk desires to know what action he should take in this matter. I believe that it would also be advisable to know what action the assessor should take in this question.

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"Under the ruling of the court in the case of State vs. Blackwell, 254 SW2nd, 243, it is conceivable in my mind that both districts could mandamus the clerk to extend the levies to their credit.

"I understand that School District C-2 has threatened mandamus to compel the assessor to assess the personal property, as he did the realty in School District C-2 in 1954 and also has threatened mandamus to compel the county clerk to extend the levy by districts designated by the assessor's book without regard by the action taken by School District 14 in attaching the aforesaid area as unorganized territory. In my opinion, if the county clerk does so, as well as the assessor, then School District 14 will probably institute a similar action in injunction to prevent the clerk from so doing."

Fundamentally, the question presented in your opinion request is the actual situs of the real and personal property referred to therein with respect to the imposition of levies of school taxes. It further appears that the matter is now in actual litigation and that a judicial determination will be had of the correct boundary line between the two districts. With this once definitely established, it appears that no future controversy need arise, nor should any impediment exist, with respect to the discharge of their official duties by the respective officers in connection with the subsequent assessment levy and extension of taxes on behalf of the interested school districts.

With respect to the duties of the county assessor, it appears that under the provisions of Section 165.083, RSMo 1949, it is the duty of the county assessor to obtain the number of the school district wherein each resident taxpayer resides. With respect to nonresident owners of real property, it, of course, becomes necessary that the county assessor resort to the plats of the various school districts on file in order to ascertain the proper school district within which such real property is located. Further than this, it seems that the county assessor has no duties in the matter, and inasmuch as your letter of inquiry discloses that the time has long passed for the county assessor to make any changes or alterations in the current tax books, it seems that nothing further remains for him to do.

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Under the provisions of Section 165.077, RSMo 1949, with which statute, as we understand it, both of the contesting school districts have complied, the necessary estimates were certified to the county clerk for the current year. It thereupon became the duty of such official, under the provisions of Section 165.083, RSMo 1949, to extend upon the tax books of the county the proper levy based upon the estimate of each district. For the moment this, of course, would result in dual taxes being assessed and extended upon the real and personal property situated within the disputed area. However, there ultimately can only be one valid assessment and extension of taxes, and that will be determined in the litigation to which you have referred in your letter of inquiry. We do feel that to protect the levy on behalf of whichever school district ultimately prevails in the litigation the county clerk should extend each levy upon all of the land within the disputed area.

We have examined the reported case of State v. Blackwell, 254 S.W. 2d 243. We find nothing therein which we think affects our opinion in this matter. We do note that in the case mentioned the court emphasized that, under similar circumstances to those existing in your county, it is not the duty of the county clerk to in any manner attempt to determine the rights of the respective districts. That is a matter for judicial determination. The suit was one directed at the county clerk of Ray County seeking by mandamus to require such official to extend a duly certified levy. In his return to the alternative writ the respondent, in effect, advanced the claim that the real and personal property upon which it was sought to enforce the extension of the levy were not a part of the relator school district. The court held that this was no defense by such official and, quoting approvingly from State ex rel. v. Jones, 8 S.W. 2d 66, 320 Mo. 353, said:

"It must be borne in mind at this point that school districts Nos. 20 and 21 in New Madrid county are not parties to the proceeding nor complaining here. This court held in State ex rel. (Consolidated) School District No. 1 v. Hackmann, 277 Mo. 56, 209 S.W. 92, a proceeding by mandamus to compel the state auditor to register bonds voted and issued by relator, that the respondent state auditor did not represent and had no right to represent or litigate the rights of those school districts. The same is true of the county

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clerk here. He does not represent school districts Nos. 20 and 21. It may be said further that he does not represent individuals whose land is sought to be taxed. Those very persons, at least a majority of them, whose lands the relator seeks to have extended for taxation in the district, have recognized the district, sent their children to school there, voted there, and served as officials there. They are not complaining and the respondent has no right to complain for them under that ruling. In the Hackmann Case some of the very facts alleged here to show laches or to show want of organization were determined against respondent by this court. The persons whose land is sought to be taxed are not complaining; the respondent has only a ministerial duty to perform; he is in no position under his return to question either the incorporation of relator or the inclusion of the land in New Madrid county within the district."

CONCLUSION

In the premises, we are of the opinion that under the circumstances outlined in your letter of inquiry no further duties remain to be discharged by the county assessor of Madison County.

We are further of the opinion that it was, and is, the duty of the clerk of the Madison County Court to extend the respective levies certified to such official by the respective school districts upon the valuation of all the real and tangible personal property taxable within the area in dispute. It is our further opinion that in doing so such official should apply each rate of levy to each item of valuation so that, in effect, two complete computations of taxes will be made. It is our further opinion that only one of such tax levies will be valid dependent upon the judicial determination made in the pending litigation involving the boundary line between the respective districts.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General