

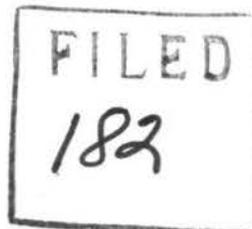
SCHOOLS:
NATIONAL FORESTS:

A junior college district located partly or wholly within or adjacent to Clark National Forest in the county in which such forest is located is eligible under Section 12.070, RSMo 1969, to share in the funds received by the state from the federal government pursuant to the National Forest Reserve Act.

OPINION NO. 182

May 5, 1971

Honorable Edna Eads
Representative, District 149
Room 203, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Eads:

This is in response to your request for an opinion from this office with regard to the following question:

"I would appreciate a ruling from you as quickly as possible regarding distribution of money received off the Clark National Forest.

"The question is: Chapter 12, Section 100 of the Missouri Statutes states that the County Court is to disperse these funds to the school districts. Is a Junior College in fact a school district as mentioned?"

For purposes of this opinion, we note that the land included within the Clark National Forest is federally owned and is, therefore, not subject to a school district's taxing power under Article X, Section 11(b) and (c) of the Constitution of Missouri of 1945.

Section 12.070, RSMo 1969, establishes the manner in which national forest reserve funds received by the State of Missouri shall be distributed to the various counties in which a national forest reserve is located. Section 12.070 reads as follows:

"Sums received from United States shall be expended, how.--All sums of money received from the United States under an act of congress, approved May 23, 1908, being an act providing for the payment to the states of twenty-five percent of all money received from the national forest

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reserves in the states to be expended as the legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated (16 U.S.C.A. §500) shall be expended as follows: Seventy-five percent for the public schools and twenty-five percent for roads in the counties in which national forests are situated. The funds shall be used to aid in maintaining the schools and roads of those school districts that lie or are situated partly or wholly within or adjacent to the national forest in the county. The distribution to each county from the proceeds received on account of a national forest within its boundaries shall be in the proportion that the area of the national forest in the county bears to the total area of the forest in the state, as of June thirtieth of the fiscal year for which the money is received."

This section provides that seventy-five percent of the national forest reserve funds received by the state shall be spent for schools and twenty-five percent for roads of ". . . those school districts that lie or are situated partly or wholly within or adjacent to a national forest . . ." in the county in which such forest is located. This section, then, directs the manner in which national forest reserve funds are distributed to various counties and the purposes for which such funds are to be expended, but does not direct the manner or amount of distribution after the money reaches the various counties.

Section 12.080, RSMo 1969, provides that funds received by the state pursuant to the Flood Control Act, 33 U.S.C. Section 701c-3 shall be expended by the county court of the county in which the government land is located, either for the benefit of the schools and roads of such county or for defraying the expenses of such county government.

Section 12.100, RSMo 1969, reads as follows:

"County court to use funds in maintaining schools and roads.--The county court of each county receiving any such moneys shall use the funds to aid in maintaining the schools and roads and for defraying any of the expenses of the county in accordance with the provisions set forth in sections 12.070 and 12.080. The county court shall allow to the school districts

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and for roads an amount based upon their respective levies equal to that which would ordinarily be allowed to them out of taxes from property owned by the United States if the property were privately owned before using any of the moneys for defraying other expenses of the county."

In Opinion No. 77, dated February 4, 1969 (copy enclosed), this office determined (1) that the second sentence of Section 12.100 applied only to funds distributed to a county court pursuant to Section 12.080 and was inapplicable to funds received pursuant to Section 12.070, and (2) that a county court of a county receiving national forest reserve funds pursuant to Section 12.070 could distribute such funds to those school districts that are situated partly or wholly within or adjacent to the national forest in such county upon any basis, which in its discretion, the court determined proper. Thus, the question in the present case is not whether a junior college district is a "school district" within the meaning of Section 12.100, but whether such junior college district is included within the mandatory provisions of Section 12.070 directing that seventy-five percent of the national forest reserve funds received by the state shall be used for schools in ". . . those school districts that lie or are situated partly or wholly within or adjacent to the national forest in the county. . . ." We believe that it is.

A junior college district, in conjunction with other school districts, provides public education for resident pupils. Article IX, Section 1(a), Constitution of Missouri of 1945; Section 178.850, RSMo 1969. Likewise a junior college district depends to a large extent upon its taxing powers under Article X, Section 11(b) and (c), Missouri Constitution of 1945, for its financial existence. It is axiomatic that the presence of national forest lands in a school district, junior college or otherwise, deprives the district of revenue because those lands are removed from the local tax rolls. We believe that Congress by enacting 16 U.S.C. Section 500 and the Missouri General Assembly by enacting Section 12.070 intended to provide some compensation to school districts located within or adjacent to national forest lands for this loss of revenue. In recognition of this purpose, we believe that a junior college district situated partly or wholly within or adjacent to Clark National Forest in the county in which such forest is located comes within the provisions of Section 12.070.

Part of 16 U.S.C. Section 500 of the National Forest Reserve Act provides as follows:

"Payment and evaluation of receipts to State
for schools and roads"

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Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: . . ."

Although this section leaves it to the state to direct the amount of payments to be used for either schools or roads of the county or counties in which a national forest is located, this is by no means inconsistent with the idea that the payments are for the purpose of providing some reimbursement for lost school or road taxes. Admittedly, the payments under 16 U.S.C. Section 500 are not to be made to the various taxing entities in proportion to the amount of revenue lost and, therefore, may not be technically payments in lieu of taxes. Nevertheless, the conclusion is inescapable that the purpose underlying Section 500 was to provide some measure of compensation to local school districts for the loss of tax revenue. Why else would the federal statute direct aid for the benefit of only those areas upon which the impact of the federal presence falls most heavily. Thus, even though there is conflict as to whether the payments pursuant to the federal statute constitute a trust for the benefit of the deprived local taxing units, Trinity Independent School Dist. v. Walker County, 287 S.W.2d 717 (Ct.Civ. App.Tex. 1956), or an absolute grant or gift to the state, King County v. Seattle School District No. 1, 263 U.S. 361, 44 S.Ct. 127, 68 L.Ed. 339 (1923), the purpose and policy behind the federal statute was to provide partial reimbursement to certain local tax authorities which were deprived of tax revenue by the presence of national forest lands within their boundaries.

A part of the federal Flood Control Act, 33 U.S.C. Section 701c-3, provides for a method of distribution of monies received from federal lands similar to that of Section 500 of the National Forest Reserve Act. Section 701c-3 reads as follows:

"Same; lease receipts; payment of portion to States

75 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes, including the development of hydroelectric

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power, shall be paid at the end of such year by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county, or counties, in which such property is situated, or for defraying any of the expenses of county government in such county or counties, including public obligations of levee and drainage districts for flood control and drainage improvements: . . ."

As stated above, Sections 12.080 and 12.100, RSMo 1969, provide that the county court of the county in which federal land is located shall allocate the funds received pursuant to the Flood Control Act to the schools and roads of those school districts in which the government land is situated. The purpose of Section 701c-3 was expressed in the report of the Senate Committee on Public Works as follows:

"This legislation was enacted to provide some measure of compensation to the local taxing units for the loss of taxes which results when lands acquired by the Federal Government for flood-control purposes are removed from the local tax rolls." 1953 U.S. Code Cong. & Adm. News, p. 1683

When reading Section 701c-3 in pari materia with Section 500, it is apparent that the same legislative purpose underlies the similar provisions in the latter section providing for payments to a state in which a national forest reserve is located for the benefit of schools and roads of the county or counties in which the reserve is situated.

Nothing contained in either Section 500 or Section 12.070 indicates that the Congress or the Missouri General Assembly intended to restrict payments received by the state pursuant to the National Forest Reserve Act to elementary or high school districts, and to exclude junior college districts which suffer the same hardship due to the removal of federal lands from their tax rolls. In fact, to achieve the purpose and objective of Section 500 and Section 12.070, we must conclude that a junior college district located partly or wholly within or adjacent to a national forest in the county in which such forest is located is eligible to share in revenues paid to the state pursuant to Section 500.

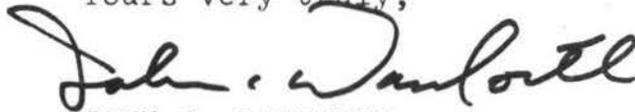
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CONCLUSION

It is, therefore, the opinion of this office that a junior college district located partly or wholly within or adjacent to Clark National Forest in the county in which such forest is located is eligible under Section 12.070, RSMo 1969, to share in the funds received by the state from the federal government pursuant to the National Forest Reserve Act.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 77
2-4-69, Bergbauer