

SCHOOLS: (1) Each county having federal flood control  
ASSESSMENTS: lands should assess the federal property in  
FLOOD CONTROL: each school and road district in the county  
ROAD DISTRICTS: on the same basis as if it were privately  
owned, (2) the allocation of federal lease-  
back funds among the eligible districts should be based on the  
hypothetical tax yield of the federal property in each district,  
and not on a simple acreage basis, (3) the money should be distri-  
buted to the several districts by the county court as soon as the  
proper allocation has been computed, (4) a school or road district  
may bring a mandamus action against its county court to compel the  
distribution of the leaseback funds, and (5) a junior college dis-  
trict is eligible to receive federal flood control leaseback funds  
on the same basis as other school districts in the county.

OPINION NO. 51

January 29, 1974

Honorable Al Nilges  
Representative, District 126  
House Post Office, Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Nilges:

This opinion is in response to your request for a ruling on the following questions:

"We would appreciate an opinion concerning the distribution of leaseback funds accruing to the three Counties of Missouri, Washington, Crawford, and Franklin from the U. S. Army Corps of Engineers Meramec Park Lake Project. State statutes concerning this matter seem to leave much room for interpretation. Presently, the funds accruing from this project have not been made available to the several school districts within the project as the law directs.

"Specifically, questions arise as to the meaning of 'if the property were privately owned' (RSMo 1969 Sec. 12.100). On what assessment should the levy be applied? Additionally, should all moneys accruing to the project be lumped together and divided on an acreage basis? Or, should the funds accruing from specific tracts leased back apply directly to the district or districts they are in?

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Another issue not clearly defined is when should the funds be given to the school districts and what redress, if any, do the school districts have concerning funds held by the County Courts past the time of disbursement?

"Please define whether or not a public Junior College of the state is considered a school district and should be included in any distribution of funds to the school districts involved."

Under the Flood Control Act, 33 U.S.C. Sections 701, et seq. (1970), the federal government has acquired property in many parts of the country, including the counties involved in this opinion request, as part of the attempt to control floods on the navigable waters of this country and to aid the states in developing the watersheds within their boundaries. 33 U.S.C. Section 701-1. This federal acquisition of property could create a financial burden on the states affected, however, since it removes the acquired land from the local tax rolls. To ease this burden, the federal government returns to the states each year seventy-five percent of all moneys received by the United States "on account of the leasing of lands acquired by the United States for flood control." 33 U.S.C. Section 701c-3. These payments to the states are commonly known as "leaseback" payments.

The state of Missouri has accepted this money, and distributes the federal funds to each county which has federally-owned flood control land within its boundaries. Sections 12.080 and 12.090, RSMo 1969. The county courts are then instructed to allocate the money they receive according to the procedures set forth in Section 12.100, RSMo 1969, which reads as follows:

"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 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."

With this background, we may now turn to the questions in your opinion request:

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(1) First, on what assessment should the levies for schools and roads be applied? Section 12.100 states that the county should compute a hypothetical tax on the property as "if the property were privately owned." We believe this requires that the flood control property in each separate district be assessed as if it were subject to taxation. Opinion No. 179, Babbit, August 16, 1965. Further, this assessment, like any assessment, may be changed from year to year as property values change. Chapter 137, RSMo.

(2) Your next question asks about the basis upon which the money received under Sections 12.080 and 12.100, RSMo 1969, is to be divided among the school and road districts eligible to receive it. These questions are dealt with in Opinion No. 107, Lawson, April 20, 1972, copy enclosed, and in the opinions it relies upon. Opinion No. 107 concludes as follows:

"Therefore, in specific response to your questions, we are of the opinion that the Monroe County Court must allocate Flood Control Act funds to the school districts and roads wherein the federal property is situated in an amount which will equal the amount that would otherwise be available to the school districts and for roads through taxation of the property. Any remaining balance may be used by the county court for other county purposes. If the Federal Flood Control funds available to the county are insufficient in any year to equal all lost tax revenues attributable to the federal acquisition of the property, the county court should make an equitable apportionment of such funds among the affected school districts and for roads."

(3) You also ask when the money received by the counties is to be distributed to the schools. This question is not specifically answered in the statutes. However, Section 12.090, RSMo 1969, requires the Commissioner of Administration (who replaces the Comptroller with the enactment of Section 26.300(3), RSMo Supp. 1971) to distribute the federal money to the counties "within a reasonable time after receipt of the money from the federal government." We believe that the county court and the county treasurer should similarly allocate and distribute the money "within a reasonable time" after the county receives it. It is impossible to formulate an exact timetable because the necessary assessment and allocation computations may require more time in some counties than others. However, once the computations are completed, the money should be distributed forthwith.

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(4) Your next inquiry concerns what redress a district has if the money is not distributed properly or promptly. In Opinion No. 65, Murrell, May 4, 1951, copy enclosed, this office ruled that a school district could bring a mandamus action to compel another district to pay tuition for one of its students attending schools in the first district since the other district was required by statute to make the payment. The same principle would apply here. The county court is required by Section 12.100 to allocate the funds among the eligible districts. If it fails to do so, the districts affected could ask for a writ of mandamus to order the county court to perform its statutory duty.

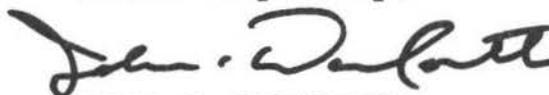
(5) Finally, you ask whether a junior college district is eligible to receive funds under Sections 12.080 through 12.100. In Opinion No. 182, Eads, May 5, 1971, copy enclosed, this office ruled that a junior college district was eligible to receive National Forest Reserve Funds distributed pursuant to Section 12.070, RSMo 1969. We have compared the language of Sections 12.070 and 12.080 and the federal statutes on which they are based, and we conclude that the reasoning in Opinion No. 86 should be followed here as well. Therefore, a junior college district may receive funds received and distributed pursuant to Section 12.080.

#### CONCLUSION

It is, therefore, the opinion of this office: (1) that each county having federal flood control lands should assess the federal property in each school and road district in the county on the same basis as if it were privately owned, (2) that the allocation of federal leaseback funds among the eligible districts should be based on the hypothetical tax yield of the federal property in each district, and not on a simple acreage basis, (3) that the money should be distributed to the several districts by the county court as soon as the proper allocation has been computed, (4) that a school or road district may bring a mandamus action against its county court to compel the distribution of the leaseback funds, and (5) that a junior college district is eligible to receive federal flood control leaseback funds on the same basis as other school districts in the county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Honorable Al Nilges

Enclosures: Op. Ltr. No. 179  
8-16-65, Babbit

Op. Ltr. No. 107  
4-20-72, Lawson

Op. No. 65  
5-4-51, Murrell

Op. No. 182  
5-5-71, Eads