

SCHOOLS:

In deducting money received from state distribution only that amount distributed for teachers' fund and incidental fund should be deducted from the money estimated to be received from the utilities.

August 30, 1940 9/4

Honorable Lloyd W. King, State Superintendent  
Department of Public Schools  
Jefferson City, Missouri

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Dear Sir:

Answering your request of April 29, 1940, in reference to the approval of a schedule concerning the legal method of the distribution of taxes to the county school districts, will say that the calculation follows the school laws of this state and we are approving same but not as to the correct mathematical amounts. We believe this schedule will be a great help to the individual school districts over the state. We are returning the same and considering it a part of this opinion.

In your request you also ask the following questions:

"In the light of the foregoing definitions of 'school purposes', what part of the utilities school money should be reported, by the district, as items of deduction when making application for the state school apportionment?"

"Would it be proper to count only the amount a district receives for school purposes instead of the total amount of all utilities school money which would include the amount for the erection of public buildings and other building purposes?"

Section 13, Laws of Missouri 1931, page 340, partially reads as follows:

"The board of directors of each and every school district in this state is hereby empowered and required to maintain the public school or schools of such district for a period of at least eight months in each school year. In order that each and every district may have the funds necessary to enable the board of directors to maintain the school or schools thereof for such minimum term and to comply with the other requirements of this act, it is hereby provided that when any district has legally levied for school purposes (teachers' wages and incidental expenses) a tax of not less than twenty cents on each one hundred dollars of the assessed valuation of property therein, such district shall be allotted out of the public school fund of the state an equalization quota to be determined by adding seven hundred and fifty dollars for each elementary teaching unit to which the district is entitled according to the provisions of section 14 of this act, one thousand dollars for each high school teaching unit to which the district is entitled according to the provisions of section 14 of this act, and the amount approved for tuition and transportation according to the provisions of section 16 of this act, and then subtracting from the total, which total shall be known as the minimum guarantee of such district, the sum of the following items: The computed yield of a tax of twenty cents on each one hundred dollars (\$100) of the assessed valuation of the property of the district, the sum received the preceding year from the county and township school funds, and the sum estimated to be received for the current year from the railroad, telegraph, utility and all

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other taxes based on assessments distributed by the state board of equalization, plus the county foreign insurance fund for the school year 1932-1933 only. \* \* \* \* \*

Also in connection with the above Section 13, supra, we call your attention to Section 13a, Laws of Missouri 1939, page 718, which reads as follows:

"In addition to the items required by Section 13 of this act to be subtracted from the minimum guarantee of a school district for the purpose of determining the equalization quota of such district, after June 30, 1940, there shall be subtracted also the amount, if any, by which the actual proceeds of the minimum guarantee of such district for the preceding year exceeds the amount spent during that year for the maintenance of the school or schools of such district, and maintenance shall be construed as including only teachers' wages and incidental expenses: Provided, however, that if no school is maintained in said district, but the pupils thereof are transported to another district or other districts, maintenance shall be construed as including only the amount spent for the transportation and tuition of such pupils."

Under Section 13 it will be noticed that the section does not provide concerning funds for the erection or permanent repairs of any buildings, but only refers to the maintaining of the school or schools. Also in Section 13a, supra, the Legislature, in construing the term "maintenance of the school or schools", states that it should only include teachers' wages and incidental expenses. "Incidental expenses" as construed by this office means temporary repairs and not the erection or construction of other buildings. Section 13 and Section 13a, supra, refer to only the school fund pertaining to teachers' wages and incidental expenses and do not apply

to any of the other funds, such as, building fund, free text book fund, sinking fund, or interest fund.

Section 13, supra, provides for the deduction of the sum estimated to be received by the current year from railroad, telegraph, utilities and all other taxes based on assessments distributed by the state board of equalization. In view of the legislative construction of the word "maintenance," as set out in Section 13a, supra, the amount deductible as to utilities, as referred to in Section 13, supra, can only mean for the maintenance of schools and not for the erection of new schools.

In the case of State ex rel. v. Wilder, 200 Mo. 97, l. c. 106, the court, in defining "maintain," states as follows:

"\* \* \* \* The word 'maintain' does not mean 'to provide or construct,' but to keep up and preserve, and the word 'operate' means to put into or continue in operation or activity. These expressions have a distinct signification from the words 'purchase or construct.' \* \* \* \* \*"

Also in Words and Phrases, Permanent Edition, Volume 26, page 66, the Supreme Court of Illinois sets out their distinction as follows:

"In levying a tax under the Detention Home Act for the establishment and maintenance of a county detention home, the items for establishment and maintenance should be separated, in view of Counties Act, section 27, Smith-Hurd Stats. c. 34, section 27, and Revenue Act, section 121, Smith-Hurd Stats. c. 120, section 109, the word 'establish' meaning to create, to institute, to build; and the word 'maintain' involving those things having to do with carrying on the business for which the home was built or established. People v.

Atchison, T. & S. F. Ry. Co., 133  
N. E. 250, 300 Ill. 415.

"The word 'maintain,' as used in a contract by which the owners of an adjoining office building agreed on a common entrance and hallway on the center line dividing the premises, and to pay the expense of keeping up and 'maintaining' common conveniences including an elevator, was held to include the operation of such elevator, and not simply to mean to put it in and have it stand idle at the behest of one of the parties, which was contrary to the construction given the contract by sharing the expense of operation. *Globe Ins. Co. v. Wayne*, 80 N. E. 13, 18, 75 Ohio St. 451.

"Rider providing that automobile liability policy should cover operation of automobiles only by certain named persons held not to restrict liability of insurer, under policy covering ownership, maintenance, manipulation, or use of described automobiles, to party injured because of negligence of one not named in rider in repairing truck covered by policy, since 'maintenance' applied to acts of repair and was not included within term 'operation.' To 'maintain' means to preserve or keep in an existing state of condition, and embraces acts of repair and other acts to prevent a decline, lapse or cessation from that state or condition, and has been taken to be synonymous with 'repair.' *Morris v. American Liability & Surety Co.*, 185 A. 201, 203, 322 Pa. 91."

Also in *Words and Phrases*, Permanent Edition, Volume 26, page 70, the Supreme Court of the State of

Texas makes a distinction and defines "maintenance" as follows:

"A vote of the taxpayers of an enlarged district authorizing a tax for the support and maintenance of schools therein does not authorize the levy of a tax on the property of the enlarged district for the interest and sinking fund of bonds of an included district, since 'support' and 'maintenance' are synonymous and mean to hold in an existing state or condition, and in Vernon's Sayles' Ann. Civ. St. 1914, art. 2857, authorizing the trustees to submit to voters two questions, one whether they shall levy a special tax for the maintenance of schools, and another whether they shall levy a special tax for the purchase of sites and the construction of school buildings, 'maintain' is used in contradistinction to debts. Love v. Rockwall Independent School Dist., Tex., 194 S. W. 659, 661.

"An appropriation of \$25,000 to the National Conservation Exposition Company, a corporation, created for the purposes of holding expositions, encouraging and supporting agriculture, industrial enterprises, and the breeding of blooded live stock and poultry, made by the Legislature in extraordinary session, and contained in the general appropriation bill under the head of 'Department of Agriculture,' was not embraced within the call of the Governor, which was 'to make such appropriations of the public moneys as may be deemed necessary and proper to maintain the state's institutions, offices and departments,' since, though some of the

purposes of the corporation were identical with those of the agricultural department, and it, in carrying out its purposes, might indirectly aid the department, it was a separate institution in no way connected with the agricultural department, and the word 'maintain' as used in the Governor's call meant, if not direct maintenance by an appropriation to the department itself, at least one under its control; hence the appropriation was void, because in violation of Const. art. 3, section 9, authorizing the Governor to convene the General Assembly by a proclamation limiting their power specifically to the purposes for which they are convened. State v. Woollen, 161 S. W. 1006, 1014, 128 Tenn. 456, Ann. Cas. 1915C, 465."

#### CONCLUSION

In view of the above authorities it is the opinion of this department that only that part of the utilities school money should be deducted by the district as items of deduction which are estimated to be received and distributed to the "teachers' fund" and "incidental fund" but not that part of the money estimated to be received from the utilities which would be allotted to the building fund or other funds. We are, therefore, of the opinion that it would be proper to count only the amount a district receives for school purposes instead of the total amount of all utilities school money which would include the amount for the erection of public buildings and other building purposes.

Respectfully submitted

APPROVED:

W. J. BURKE  
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