

SCHOOL DISTRICTS:
TAXATION:
EXTENSION OF BOUNDARIES:

Property in territory included in extension of boundaries of school district is liable for taxes assessed and levied thereon from and after the date of such extension.

February 15, 1940

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Dear Sir:

This is in reply to yours of recent date wherein you request an opinion based on the following statement of facts:

"An opinion is requested relative to the interpretation to be given Section 9325 as Amended Laws, 1937, p. 449, relative to the effect thereof in the light of the school districts and the assessment and collection of taxes.

"In the spring of 1939 the City of Jackson, by an election, extended its limits, taking in territory which was a part of a rural school district. The plat covering the extension has not as yet been filed in the Recorder's Office.

"An opinion is requested as to, first, are the residents within the extended area compelled to send their children to the city schools? Second, assessor of Cape Girardeau County and likewise the city assessor in Jackson are in a quandary as to the assessments for school purposes, inasmuch as the Statutes provide that assessments shall be levied as of the 1st day of June while the Statute referred to states that such extension of the

school district's limits shall take effect as of July 1 following the extension. Does this have the effect of holding up the assessment of taxes for the benefit of the Jackson City School District until June 1, 1940, and yet allow the children within the extended area to attend the city schools, during which time the said residents are paying school taxes to the rural school district in which they were formerly located? And, third, does the city's failure to complete and record its plat of the extended area have any material effect upon the questions raised, even though the participants to the controversy all agree as to the location as to the extended limits?"

You state in your request that the City of Jackson, by an extension of its limits in the spring of 1939, took in territory which formerly had been a part of rural school district. The effect of this extension on the school district is provided for by Section 9325, R. S. Missouri 1929, which provides in part as follows:

"* * * and every extension that has heretofore been made, or that hereafter may be made, of the limits of any city, town or village that is now or may be hereafter organized under the laws of this state, shall have the effect to extend the limits of such town or city school district to the same extent, and such extension of the limits of any city or town school district shall take effect on the first day of July next following the extension of the limits of such city, town or village: * * *"

Said Section 9325 provides for the extension of

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the limits of school districts and changes of boundaries under various circumstances, but we think the foregoing quoted portion of said section is that part which is applicable to your question.

The limits of the City of Jackson were extended apparently by authority of the provisions of Section 6947, R. S. Missouri 1929, which provides in part as follows:

"* * * * The mayor and board of aldermen of such city, whether the same shall have been incorporated before becoming a city of the fourth class or not, with the consent of a majority of the legal voters of such city voting at an election therefor, shall have power to extend the limits of the city over territory adjacent thereto, and to diminish the limits of the city by excluding territory therefrom, and shall, in every case, have power, with the consent of the legal voters as aforesaid, to extend or diminish the city limits in such manner as in their judgment and discretion may redound to the benefit of the city: Provided, that such election shall be held in accordance with the provisions of article 2, chapter 61, R. S. 1929, and section 6949, of this article, and the same shall be held upon such notice and at such time and place, and the judges and clerks therefor shall be appointed and shall make their returns of the same in such manner as may be prescribed by ordinance or resolution of such city."

I.

Your first question of the request on whether

or not the residents of the newly incorporated territory are compelled to send their children to the city schools, I think that the provisions of Section 9212, R. S. Missouri 1929, are applicable. This Section provides in part as follows:

"The board of directors of each district shall, between the thirtieth day of April and the fifteenth day of May of each year take, or cause to be taken, and forwarded to the county clerk an enumeration of the names of all persons over six and under twenty years of age resident within the district, designating male and female, white and colored, and age of each, together with the full name of the parent or guardian of each child enumerated; * * * * "

It will be noted by the provisions of this section that all children who are found residing in a certain territory between the thirteenth of April and the fifteenth of May of any particular year should be enumerated as children of that particular district.

Section 9213, R. S. Missouri 1929, provides in part as follows:

"The board of directors or board of education of any school district in this state may provide for the gratuitous education of persons between five and six and over twenty years of age, resident in such school district.
* * * * *"

Since the quoted provisions of Section 9325, supra, stated that after the city, town or village has extended its limits, such extension of limits, which shall include territory in a school district included therein, shall take effect on the first day of July

next following the extension.

Section 9433, R. S. Missouri 1929, provides in part as follows:

"Every parent, guardian or other person in this state having charge, control or custody of a child between the ages of seven and fourteen years shall cause such child to attend regularly some day school, public, private, parochial or parish, not less than the entire time the school which said child attends is in session, * * * * *

From this section it will be seen that it is compulsory upon the parent or guardian to send the child, who is of school age, to some school. Since the children within the territory included within the limits of the city as extended are residents of that territory, then under the foregoing sections and from your statement that the limits were extended in the spring of 1939, these children should go to the city schools after July 1st of that year.

CONCLUSION.

Therefore, answering your first question, it is the opinion of this department that the residents within the extending area would be compelled to send their children to the city schools of Jackson.

II.

On your second question, since the extension is effective on July 1, then does this extension have the effect of holding up the taxes for the benefit of the Jackson City School District until June 1, 1940, or does the said school get the benefit of the taxes on the assessment for 1939?

Section 9746, R. S. Missouri 1929, provides

as follows:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

This section seems to have been intended to include all taxes that may be levied on the property during the ensuing year and no exception is made as to whether or not such levy is one that is authorized after the assessment, or is any exception made to a tax that might be levied by the proper authorities in a district to which such property is attached after the date of the assessment. On that particular question, or a similar question, we do not find where it has been before the Missouri Courts. However, we find that a very similar question has been before the appellate courts of Texas. In that State there are laws somewhat similar to the Missouri laws with reference to taxes, the assessment thereof and when such property shall be subject to tax.

In the case of Cadena et al. v. State ex rel. Leslie, 185 S. W. 367, the court had before it a question somewhat similar to the one here and the court said:

"* * * It is not contended that the authority to levy the maintenance tax was not vested in the board of trustees; the only contention being that, as the district was not in existence on January 1, 1915, no tax could be levied for that year.

"It was evidently contemplated by the Legislature that the people of the district should obtain the benefits of its creation immediately; for it is recited in the law

that the deplorable condition of the public free schools within the territory therein described, not having adequate school accommodations, and not having necessary funds to provide the same, created an emergency and an imperative public necessity for the act to take effect at once. It was clearly intended that the necessary funds for the building and maintenance of schoolhouses should be provided as soon as the law went into effect. It could not have been contemplated that, instead of the law becoming effective immediately or in 90 days after adjournment at the farthest, it should not go into effect until the following year, and yet that would be the logical result if the judgment of the lower court could be sustained. Under that ruling, if the law had gone into effect on January 2d, the tax could not have been levied and collected for that year, because the district was not in existence on January 1st, of the year.

"Cooley on Taxation, pp. 494, 495, is cited as sustaining the position of appellees, and the judgment in this case, but the quotation made therefrom has no reference to a case of this kind. The text has reference to taxes levied for years back of the one in which the levy is made, but not to taxes levied for the current year. This is indicated by several of the cases cited in the footnotes as sustaining the text. For instance, in the case of McClellan v. Railroad Co., 11 Lea (Tenn.) 336, it was held that, where a 20-year exemption expired in March and an assessment was made in April for the

current year, the party assessed was entitled to no abatement in respect of the time that had already run.

"In the case of *People v. Gold Company*, 92 N. Y. 383, it was contended by a corporation, which came into existence in November, that it could not be compelled to pay taxes for that year, but the court held that it should be compelled to pay the taxes. The court stated that, if the contention of the corporation should be upheld, no taxes would be collected until January of the second year after it was organized. So in this case, if no tax could have been levied for 1915, appellees could not be forced to pay any maintenance tax until 1917, and in the meantime the schools of the district would be without a maintenance fund."

And in the case of *Blewitt v. Megargel County Line Independent School Dist. et al.*, 285 S. W. at 271, the appellate court of the State of Texas in speaking of the decision in the *Cadena* case, *supra*, said:

"The decision in the case of *Cadena v. State* (Tex. Civ. App.) 185 S. W. 367, is authority for the proposition that, when an independent school district is created after the 1st of January of a given year, all property within such newly created district, which was owned by the taxpayer on January 1st of that year, is subject to any tax authorized by law, whether such taxes have been authorized theretofore or may be authorized during the year, and can be levied by the body given the power

to levy at any time during the year.'"

CONCLUSION.

From the foregoing it is the opinion of this department that the Jackson City School District, as extended, may levy a tax on all property within such district as extended on and after July 1, 1939, and that this levy will be applicable as of June 1 of that year, and all property within that territory is subject to any tax authorized by law for said school district.

III.

On your third question you ask whether or not the failure of the city to complete and record its plat of its extended area would have any material effect upon the question. We think that this question has been answered in the case of Salem ex rel. v. Young, 142 Mo. App. 160, at 169, wherein the court said:

"Further objection is made to the validity of the supposed extension of the city limits because it included unplatted adjacent territory. There is no foundation for this objection. It was not necessary that respondent's land should have been platted before being included within the extension of the city limits of the city of Salem. Section 4932 of the Revised Statutes of 1879 providing for the extension of city limits empowers the mayor and board of aldermen, with the consent of a majority of the legal voters of the city voting at an election, to extend the limits of the city over any territory lying adjacent thereto. The attempted extension of the city limits was made

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under this act, and as will be seen from an inspection of its provisions, such extension is not restricted to platted grounds, and it has been often decided that the limitation of extension of cities of the fourth class is not restricted to platted additions. (Burnes ex rel. v. City of Edgerton, 143 Mo. 563, 45 S. W. 292; Cole v. Skrainka, supra; Copeland v. City of St. Joseph, 126 Mo. 417, 29 S. W. 281; State ex rel. v. Birch, 186 Mo. 205, 85 S. W. 361.)

CONCLUSION.

From the foregoing authority it is the opinion of this department that the failure of the City of Jackson to complete and record its plat of extended area would not have any material effect upon the question of the right to tax citizens and property in the extended area and the duty of the residents of such district to send their children to the city schools.

Respectfully submitted

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APPROVED:

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