

SCHOOLS: Apportionment of "county foreign insurance tax fund" moneys referred to in Sec. 148.360, RSMo 1949, to be based on number of school children in each county. Where school district lies in two or more counties split enumeration must be considered according to rule announced in subparagraph 4 of Sec. 165.190.



May 11, 1953

Honorable James E. Curry
Prosecuting Attorney
Douglas County
Ava, Missouri

Dear Sir:

The following opinion is rendered in reply to your request reading as follows:

"The County Treasurer has requested me to advise him with reference to the apportionment and distribution of the free text book fund, payable Section 148.360, RSMo 1949, which is received from foreign insurance companies operating within the State of Missouri. This money, of course, comes to the County Treasurer to be apportioned to each school district in the county. In our county, due to reorganization, there are a number of school districts in adjoining counties which overlap and include territory in Douglas County. My question is this: Are the children residing in the school districts overlapping into Douglas County to be claimed on the Douglas County Enumeration, or are they to be claimed on the adjoining county enumeration?"

"If these children should be rightfully listed on the Douglas County Enumeration, of course, the money from the free text book fund would come to the Treasurer of Douglas County and then disbursed to these districts, but if these children should

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rightfully be included on the enumeration list of the adjoining counties, then it occurs to the writer that the money from this fund should go to the Treasurer of the adjoining county."

Section 148.360, RSMo 1949, provides as follows:

"On or before the first day of October of each year, the state comptroller shall apportion to the counties and the city of St. Louis, on the basis of the number of school children in each, as shown by the last enumeration, certified by the commissioner of education, on which the school moneys are apportioned and distributed, all of the moneys to the credit of the county foreign insurance tax fund, and warrants shall be issued in favor of the treasurers of the counties and the city of St. Louis."

When moneys described in Section 148.360, RSMo 1949, quoted above, come into the hands of the treasurers of the various counties and the City of St. Louis, the duties of the county clerks in relation to the apportionment of such moneys to the various school districts in the counties are set forth in subparagraph 1 of Section 170.220, RSMo 1949, which provides as follows:

"1. When the money apportioned under the provisions of section 148.360, RSMo 1949, has been received by the treasurers of the various counties and the city of St. Louis, it shall be the duty of the county clerk of each county to apportion said money among the various school districts in each county in the following manner: The amount to be apportioned to each school district shall be determined by multiplying the number of children on the last enumeration list of said school district by the ratio used by the state auditor in making the distribution of said foreign insurance tax moneys among the counties of the state, and the county court shall order the county treasurer to

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place to the credit of the free textbook fund of each such school district, the amount thus obtained, or shall draw its warrant in favor of the proper township treasurer or treasurers for the amount due the districts of the various townships, and shall also draw its warrant in favor of the treasurer of any school district organized as a city, town, or consolidated district for the amount due such district. The money thus received shall be known as the "Free Textbook Fund" for each such district, and the board of education or the board of directors of each such district shall, when so directed by a majority vote of the qualified voters of the district voting on such question at an annual or special election, with this fund purchase and provide textbooks free for the use of the pupils in the elementary grades and after free textbooks have been supplied to all children in the elementary grades, the balance remaining in said textbook fund may be expended for supplementary, library, and reference books."

"For many years, the statutory enumeration of school pupils has been made by school districts. Section 164.030, Mo. R. S. 1949" (State ex rel. School District of Fulton v. Davis, 361 Mo. 730, 1.c. 734, 236 S.W. (2d) 301). The duty to make such enumeration lists is placed by the statute, Section 164.030, RSMo 1949, on the board of directors of each school district and the enumeration is forwarded to the county superintendent of schools who examines and approves the same and then turns the lists over to the county clerk. Section 164.030, RSMo 1949, does not contain a directive informing the board of directors of a school district in what manner it shall certify its district's enumeration to the county superintendent of schools when such school district lies in two or more counties.

The rule to be followed in this instance may be drawn from Section 165.190, RSMo 1949, specifically applicable to common school districts, which reads, in part, as follows:

"4. In all school districts divided by county lines it shall be the duty of the clerk of such school district to report to the clerk of each county in which such

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district is in part located the number of persons of school age residing in that part of said school district lying within the respective counties, together with the amount of money necessary to maintain the school, and such other funds as it is necessary to raise by taxation in the same manner as is provided in districts not so divided. And it shall be the duty of the county court and county clerk of each county in which such district is located to apportion to said district such part of the public school funds as the enumeration of such parts of said district shows it to be entitled to, and all moneys collected for school purposes as taxes on property within such district shall be paid to said district the same as if it lay entirely within one county."

No prohibition has been discovered which will not allow us to supplement the procedure outlined in Section 164.030, RSMo 1949, in regard to certifying enumeration, by applying the rule found in Section 165.090, RSMo 1949, so as to disclose a true enumeration by counties, which is the evident purpose of the enumeration statute. In reaching this decision we are not overlooking language, contained in Section 165.677, RSMo 1949, regarding reorganization of school districts, which provides:

" * * * If the plan includes any proposed district with territory in more than one county, the board shall designate the county containing the greater portion of such proposed district based upon the assessed valuation, as the county to which that district shall belong. * *"

The only purpose of the above quoted language from Section 165.677, RSMo 1949, is, we believe, to place the reorganized school district within a certain county for general administrative purposes, and not for the purpose of allocating all persons of school age in said school district to one certain county for enumeration purposes as provided in Section 164.030, RSMo 1949. The fact cannot be overlooked that the moneys referred to in Section 148.360, RSMo 1949, go first to the "county foreign insurance tax fund", and thereby become county moneys before distribution to school districts within the county under procedure outlined in Section 170.220, RSMo 1949.

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CONCLUSION

It is the opinion of this department that where school districts are divided by county lines, the apportionment of "county foreign insurance tax fund" moneys referred to in Section 148.360, RSMo 1949, is to be based on the number of school children in each county, and split enumeration must be considered in line with the rule found in subparagraph 4 of Section 165.190, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON
Attorney General

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