

SCHOOLS: Institutions of higher learning ineligible
SCHOOL DISTRICTS: for apportionment of state school money under
STATE SCHOOL MONEYS: Senate Bill No. 3 or House Bill No. 182,
68th General Assembly.



February 17, 1956

Honorable Hubert Wheeler
Commissioner of Education
Department of Education
Jefferson Building
Jefferson City, Missouri

Dear Mr. Wheeler:

This is in response to your request for opinion dated November 8, 1955, which reads as follows:

"The question has arisen in this state whether or not state institutions of higher learning are eligible to participate in the apportionment of state school moneys. More specifically the question at issue is whether state colleges and universities are eligible to receive state aid under Senate Bill No. 3, the Foundation Program, and House Bill No. 182, the school Transportation Act. Applications have been received which requests money on the basis of (1) teacher incentive, (2) flat grant, and (3) transportation aid. In order to determine the eligibility of these state institutions under the new laws this Department desires your legal construction and interpretation.

"Under the 1931 laws providing for the apportionment of state school moneys, state tuition and transportation aid was paid for nonresident high school pupils who attended an approved high school maintained in connection with state institutions of higher learning. Authority for such payments was based on Sections 165.257, 165.143, and the opinion of the Attorney General dated January 6, 1937. Section 165.257 requires school boards in districts that do not maintain an approved high school to pay the

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tuition to an approved school outside the district. Included with the approved high schools are those maintained by state institutions of higher learning. The state was authorized to pay tuition up to \$50 to the district in which the pupil attended high school.

"Section 165.143, RSMo 1949, provided that when districts admitted nonresident pupils to its high school and made provision for transporting them, such district should receive transportation aid at a rate not to exceed \$3 per month per pupil transported; such payment to be a part of the state's apportionment to the district.

"The Attorney General ruled on January 6, 1937, that state institutions of higher learning were entitled to state aid for the transportation of high school pupils. The opinion also held that it was not necessary to determine whether or not a state college was a school district. On the basis of these laws and the official opinion, tuition and transportation aid has been paid to state institutions of higher learning when they maintained an approved high school, admitted nonresident pupils, and provided approved transportation. You will observe that this law made no special requirement for receiving such aid except that the district provide an approved high school.

"Two new laws have been enacted and are now in operation, namely Senate Bill No. 3, the Foundation Program, and House Bill No. 182 authorizing transportation aid. The Foundation Program does not provide for the apportionment of tuition aid, but has provided for a flat grant at the rate of \$75 for each nonresident pupil whose tuition the home district is required to pay. Such aid seems to be in part a substitution for what was formerly known as high school tuition aid.

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"Senate Bill No. 3 establishes some specific requirements for all school districts to meet before qualifying for any apportionment under this act, such as a minimum school term; keeping adequate records; and levying a minimum tax rate. Section 2 of this act provides that a school district shall receive state aid for its educational program only if it meets certain requirements; chief of which is that a \$1 tax rate for school purposes shall be levied.

"Several school districts in the state this year have not levied the required \$1 tax rate and cannot receive state aid under the new law for the current year. This requirement is general and does not seem to permit exceptions. State institutions of higher learning cannot levy taxes, therefore seem to be eliminated from participating in the state apportionment the same as school districts that fail to levy the required tax rate. Under the old law, all school districts were entitled to receive an apportionment of some kind. The new act is a departure from the old, in that all school districts must meet certain specific requirements in order to receive any state aid.

"Senate Bill No. 3 incorporates all special aid laws and makes them a part of the regular annual apportionment of state school moneys. The Supreme Court, in 66 S.W. (2d) 521, ruled in reference to the incorporated sections of state aid laws that the school district was not entitled to priority of payment when statutes provided that such state laws were incorporated in another statute which contained a provision that money should be apportioned pro rata as money available in the public school funds would permit, in event funds were not sufficient for all purposes. Transportation aid is one of the incorporated aids and thereby becomes subject to the requirements of the general apportionment act for receiving state aid. Therefore districts that fail to levy the required tax cannot be paid the transportation aid.

"Section 165.257, the law which requires certain school districts to pay tuition for pupils who attend a high school maintained by a state

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institution of higher learning is still in effect. Also the new transportation act contains the substance of the repealed act by authorizing that transportation aid be paid to districts for transporting nonresident pupils admitted to their high school. Therefore the receiving high school district may charge a tuition and transportation cost fee as provided in these acts. Likewise, the same provisions would apply to state institutions of higher learning.

"Since an official opinion was issued on this matter in the construction of the 1931 School Laws, a review of the former opinion and construction should be given in the light of the new laws. A copy of the January 6, 1937 opinion is attached for your reference.

"I shall appreciate your advice and official opinion in answer to the following questions:

"1. Are state institutions of higher learning to be considered as school districts and thereby eligible to receive state aid under Senate Bill No. 3 and House Bill No. 182, Laws of 1955?

"2. Since Section 2 of Senate Bill No. 3 provides that a school district shall receive state aid for its educational program only if it meets certain requirements, one of which is that a \$1.00 tax rate for school purposes shall be levied; would such mandatory requirement prevent state educational institutions from being eligible for the state school money apportionment?"

We have quoted your request in full because it contains a complete summary of the statutes applicable to the questions submitted. The statutes referred to provide for state aid to "school districts" which must meet certain requirements before they are eligible for state aid. It is impossible for elementary schools and high schools operated in conjunction with institutions of higher learning to meet the requirements set out in Section 161.025(3), i.e., the levy of a property tax of not less than one dollar for current school purposes on each \$100 assessed valuation of the district.

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It has been held on numerous occasions by the courts of this state that school districts are creatures of the Legislature. For example, see School Dist. of Oakland v. School Dist. of Joplin, 340 Mo. 779, 102 SW2d 909, and cases cited therein; Kansas City v. School Dist. of Kansas City, 356 Mo. 364, 201 SW2d 930.

The proposition is succinctly stated in 56 C.J., Schools and School Districts, page 193, Section 46:

"Only such school districts exist as are created or provided for by statute."

The opinion of January 6, 1937, directed to Honorable Lloyd W. King, to which you refer in your request, is hereby withdrawn.

CONCLUSION

It is, therefore, the opinion of this office that institutions of higher learning are not to be considered as school districts and are not eligible to receive state aid under Senate Bill No. 3, 68th General Assembly (Secs. 161.021-161.061, RSMo, Cum. Supp. 1955), or under House Bill No. 182, 68th General Assembly (Sec. 165.143, RSMo, Cum. Supp. 1955).

It is the further opinion of this office that the mandatory requirement in Section 2 of Senate Bill No. 3 (Sec. 161.025(3), RSMo, Cum. Supp. 1955), i.e., that a school district must levy not less than a one dollar tax rate for school purposes, would also prevent state institutions of higher learning from being eligible for the state school money apportionment.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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