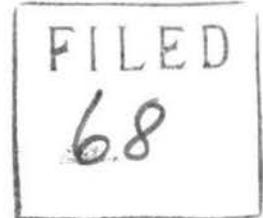


SCHOOLS: The taxpayers of three-director
TAXATION (SCHOOLS): school districts assigned to
school districts operating a high
school pursuant to Subsection 2 of Section 162.096 shall pay the
tax rate effective in the high school district or districts to
which the common districts were assigned.

OPINION NO. 68

April 5, 1973



Dr. Arthur L. Mallory
Commissioner of Education
State Department of Education
Jefferson State Office Building
Jefferson City, Missouri 65101

Dear Dr. Mallory:

This official opinion is issued in response to your request for a ruling on the following question:

"Will the taxpayers of the territory comprising the common school districts be responsible for paying taxes for 1973 at the rate effective in the common school districts at the time of the assignment by the State Board of Education or at a rate approved by the voters of the common school district at a meeting prior to July 1, 1973 or will they be subject to the 1973 tax rate effective in the high school district or districts to which the common district was assigned?"

As you point out in your opinion request, the problem arises due to the provisions of Section 162.096, Subsection 2:

"2. If any school district is not operating [as] a six-director school district and has not combined its territory with that of one or more districts which do operate as a six-director district through one of the procedures provided by law within three years after the effective date of this act, the state board of education shall assign the territory of the district to one or more districts which do operate a high school. The assignments shall be announced not later than January 15, 1973."

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The State Board of Education, at its meeting on December 4-5, 1972, assigned 23 school districts which were not operating as six-director school districts to districts operating a high school. The State Board ordered that the assignments should be effective on July 1, 1973.¹

Section 164.011, RSMo Cum. Supp. 1971 provides as follows:

"Annual estimate of required funds, tax rate required -- estimates, where sent, when due. -- 1. The school board of each district annually shall prepare an estimate of the amount of money to be raised by taxation for the ensuing school year, the rate required to produce the amount, and the rate necessary to sustain the school or schools of the district for the ensuing school year, to meet principal and interest payments on the bonded debt of the district and to provide the funds to meet other legitimate district purposes. In preparing the estimate the board shall have sole authority in determining what part of the total authorized rate shall be used to provide revenue for each of the funds as authorized by section 165.011, RSMo 1969.

2. The school board of each district under the supervision of the county superintendent shall forward the estimate to the county superintendent on or before the fifteenth day of May. The school board in all other districts shall forward

Footnote

1. In Subsection 2 of Section 162.096, no effective date for the assignments is given. Assignments provided for in Subsection 1 of Section 162.096 "shall become effective on July 1, 1971." The school year is from July 1 to June 30. Section 160.041, RSMo 1969. Because, under Subsection 1, the legislature indicated its intent that those assignments become effective at the beginning of the school year and because of the obvious convenience in making assignments effective at the beginning of the school year, the State Board of Education's order that the assignments become effective on July 1, 1973, appears correct.

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the estimate to the county clerk on or before the fifteenth day of July. In school districts divided by county lines the estimate shall be forwarded to the proper officer of each county in which any part of the district lies."

Based on the language of Section 162.096 and the action taken by the State Board of Education in conformity therewith, the three-director districts assigned by the State Board of Education on December 4-5 have no expectation of continuing in existence after June 30, 1973. Because the assigned districts will not be in existence for school year 1973-74, no amount of money nor any tax rate is "necessary to sustain the school or schools of the district for the ensuing school year. . . ." Therefore, the school board of a three-director district assigned pursuant to Section 162.096 should not file an estimate for 1973 with either the county superintendent of schools or the county clerk. Because the filing of an estimate is essential to the validity of any school tax levy, no levy by a three-director district would be valid if the estimate is not filed. See State ex rel. Parish v. Young, 327 Mo. 909, 38 S.W.2d 1021, 1023 (1931). Presumably, prior to July 15 the receiving six-director district would file with the county clerk, in accordance with Section 164.011, an estimate of the amount of money to be raised by taxation for the ensuing school year and the rate required to produce the amount necessary to sustain the schools of the entire district including the area comprising the old three-director district.

If the assigned three-director districts file no estimate and the receiving districts file estimates reflecting their increased responsibilities for the 1973-74 school year, the entire territory of each six-director district, including the area of the previous three-director district, would pay a uniform tax levy in 1973. Therefore, no problems would arise under the following language of Article X, Section 3:²

Footnote

2. The decision in Lewis County C-1 School District v. Normile, 431 S.W.2d 118 (Mo. banc 1968), would not appear to be applicable to this situation. In the Lewis County case, the Court stated "we think it is significant that the authority referred to by respondent is district C-1 and that the district did not levy any tax for the year in question." Id. at 121. Because the consolidated district had not levied a tax for that year, the Court held that each of the component districts making up the consolidated

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"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

In the event that the six-director school district's levy is assessed against all property within the district, the taxpayers in the three-director district could be paying a tax in excess of what they would have paid in the three-director district.³ We do not believe that the lack of an opportunity to vote on the receiving six-director district's levy, even though it is an increase over the rate previously authorized in a three-director district, would constitute a violation of any rights of taxpayers in a three-director district. In Barnes v. Kansas City, 222 S.W.2d 756 (Mo. banc 1949), the Court had before it a challenge by residents of Clay County adjacent to Kansas City, to the attempt by Kansas City to make them pay their proportionate share by taxation to retire municipal bonds approved at an election held prior to their annexation to Kansas City. The area in question was annexed to Kansas City at an election held in 1946, with the annexation to become effective January 1, 1950. On November 4, 1947, the voters of Kansas City approved a municipal bond issue. Plaintiffs in the action contended that the bond

Footnote

district C-1 should levy its own tax rate and that no violation of Article X, Section 3 resulted. In the instant case a different situation exists because the receiving six-director district would levy a tax on property within its boundaries and, if a different tax rate was levied upon property within the boundaries of the old three-director district, the same class of property within the district would be taxed at a different rate in one part of the district than in another thereby violating Article X, Section 3.

3. For the purposes of this discussion, we will assume that the tax rate in the receiving six-director district is in excess of that previously levied by the three-director district. Because the 1972 tax rate in the three-director district could have been levied in 1973 by the three-director district without a vote pursuant to the provisions of Section 11(c) of Article X, the receiving six-director district could levy up to that amount without reaching any of the potential problems resulting from lack of voter approval which are discussed herein.

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issue was invalid as to them because they were not permitted to vote in the bond election. Id. at 758.

Initially, the Court determined that plaintiffs were not qualified electors of Kansas City at the time of the bond election and so were not eligible to vote on the bond issue. Id. at 758.

The Court then noted that there was no provision in the Missouri Constitution governing the adjustment of pre-existing rights and liabilities when a city changes its boundaries. Plaintiffs argued that because the Constitution was silent on this question and because the legislature had not made a provision for the adjustment of pre-existing rights and liabilities, the bond issue could not be imposed upon them. The Court disagreed, referring to the general rule that:

" . . . property brought within the corporate limits of a city by annexation is subject to taxation to discharge municipal indebtedness previously incurred and existing at the time of annexation. . . ."
Id. at 758.

Relying on this general rule, the Court held that the taxpayers living in the annexed area were liable for paying taxes to retire liabilities of Kansas City upon which they did not vote.

" . . . when the statutes are silent, the general rule will apply. . . ."

"This court considered the same question as to school districts in *Thompson v. Abbot et al.*, 61 Mo. 176. There, school subdistrict No. 3 was dissolved and its territorial limits merged with the city of Springfield for school purposes. Such annexation was authorized by statute, but the statute was silent as to the liability for the debts of the merged district. We held the city became liable for such debts by operation of law. We said where no arrangements are made respecting the property and liabilities of the corporation that ceases to exist, the subsisting corporation will be entitled to all the property, and be answerable for all the liabilities. We may apply the same reasoning in this case. Accordingly, the annexed area will become liable for its proportionate share of the liabilities of Kansas City by operation of law when the annexation

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becomes effective. We hold there is no need for express statutory authority in order to impose such liability upon the annexed area. *Town of Mt. Pleasant v. Beckwith*, 100 U.S. 514, 25 L.ed. 99." Id. at 759.

We do not see any essential difference between paying taxes to retire bonded debt and paying taxes to support a school system. Furthermore, we see no essential difference between (1) the annexation in Barnes where the people in Clay County had no vote on either the annexation question or the paying of taxes to retire previously authorized debt and (2) the annexation of a three-director district to a six-director district where people in the three-director district had no vote on either annexation or on the tax rate in the receiving district. In both instances, taxpayers in the annexed area benefit from their taxes. In the instant case, the 1973 taxes paid by the residents of the former three-director districts will be used to operate the schools of the six-director districts of which they are a part for school year 1973-74 beginning on July 1, 1973, the effective date of the State Board of Education's annexation order.

The Court in Barnes then called attention to plaintiff's contention that imposing liability for pre-existing debts on the annexed area violated both the Missouri and United States Constitutions. Although plaintiffs cited no authority to sustain their positions, the Court noted that "the cases we find subjecting annexed areas to city taxes lead to the opposite conclusion." Id. at 760.

The Due Process Clause of the Fourteenth Amendment of the United States Constitution does not afford protection from increased taxation resulting from annexation of an area to a municipal corporation. See Hunter v. City of Pittsburgh, 207 U.S. 161 (1907). See, also Gomillion v. Lightfoot, 364 U.S. 339 (1960) where the Supreme Court said:

"[I]f one principal clearly emerges from the numerous decisions of this court dealing with taxation it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers." Id. at 343.

See, also, Adams v. City of Colorado Springs, 308 F.Supp. 1937 (D.Colo. 1970), aff'd, 399 U.S. 901 (1970).

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If a three-director school district files an estimate prior to July 1, 1973, the six-director district should withdraw said estimate before it is acted upon by the county clerk. At the time the three-director district's estimate is withdrawn, the receiving district should make certain it has on file an estimate reflecting its increased responsibilities for school year 1973-74. The receiving district's estimate should be clearly applicable to the entire territory of the six-director district including the territory of the annexed three-director district. If such an estimate is not already on file at the time the three-director district's estimate is withdrawn, the receiving district should file a revised estimate at that time. A valid levy may be made upon the revised estimate. Lyons v. School District, 311 Mo. 349, 278 S.W. 74, 78 (1925); Pope v. Lockhart, 252 S.W. 375, 376 (Mo. 1923), and State ex rel. Thorp v. Phipps, 148 Mo. 31, 49 S.W. 865, 867 (1899).

We believe the conclusion of this opinion is not inconsistent with the recent decision of the Missouri Court of Appeals, Kansas City District, in State of Missouri ex rel. Ft. Osage School District v. Bernice Conley, 485 S.W.2d 469 (1972). The Court concluded that the levy authorized by the Courtney School District prior to annexation was an asset available to the Ft. Osage District after the annexation was complete. See Section 162.441. The Court specifically stated that it did not reach "the question of the propriety of action by the surviving six (6) director district attempting to enforce a voter approved levy upon annexed territory without a vote of the people in the newly annexed territory." Id. at 472. Also, the Court did not discuss whether the receiving district could withdraw an estimate filed by the three-director district.

CONCLUSION

Therefore, it is the conclusion of this office that the taxpayers of three-director school districts assigned to school districts operating a high school pursuant to Subsection 2 of Section 162.096 shall pay the tax rate effective in the high school district or districts to which the common districts were assigned.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



John C. Danforth
Attorney General