

SCHOOLS: Board does not have statutory authority to appropriate money for sending out delinquent tax notices.

School district is not liable for paving and improving streets adjacent to building.

November 25, 1941

Honorable Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri



Dear Sir:

Some time ago you submitted to this Department the following questions for official opinion.

I.

The first question is as follows:

"Has the Hannibal School District, through its regularly constituted Board a right to appropriate a sum of money to be used by the Collector of Revenue of this county for sending out delinquent tax notices? This policy has been adopted in the past with very beneficial results, but I feel that an opinion of your office should be had before it is continued."

We have been unable in our research to find a statute specific enough, or even by a legitimate inference, to authorize the board to use funds for the benefit of county collectors sending out delinquent tax notices.

The decision of In Re Farmers & Merchants Bank of Chillicothe, 63 S. W. (2d) 829, held that a school district has no power or authority to dispose of its public revenues except wherein the statutes so provide. The Board of Directors

of the school district who have charge of maintaining such districts are creatures of the law whose duties are statutory. (Corley v. Montgomery, 46 S. W. (2d) 283).

For the reason, as above stated, we are of the opinion that the school board can not appropriate funds for the use of county collectors in sending out delinquent tax notices.

II.

Your second question is as follows:

"Has the Hannibal School District, by and through its regularly constituted Board a right to appropriate money for the paving of streets in front of and adjacent to school property?"

We assume that the school district in question is the regular school district situated in the City of Hannibal. The general rule, and as a general proposition, a school district is not liable for special benefits from public improvements. In the decision of State v. School District of Kansas City, 62 S. W. (2d) 813, l. c. 816, this principle is enunciated:

"It is obvious that article VI of the charter furnishes no basis for an assessment of special benefits against public school property. All the way through it speaks of and authorizes only special assessments against private property. Land owned and used for public school purposes is not private property, but strictly public property. This was expressly decided by this court in banc in City of Edina to Use of Pioneer

Trust Co. v. School District, 305 Mo. 452, 267 S. W. 112, 36 A. L. R. 1532, 1540, note. It had been so considered in earlier Missouri cases. In City of Clinton to Use of Thornton v. Henry County, 115 Mo. 557, 568, 569, 22 S. W. 494, 495, 496, 37 Am. St. Rep. 415, referring to Abercrombie v. Ely, 60 Mo. 23, this court said: 'The effort in that case was to enforce a mechanic's lien against a schoolhouse, which was public property.' And further on the opinion said: 'In the first place, property owned by a county or other municipal corporation, and used for public purposes, cannot be sold on execution. * * * Hence it has been held that a schoolhouse cannot be sold under a judgment against the board of education,' citing State, to Use of Board of Education, v. Tiedemann, 69 Mo. 306, 33 Am. Rep. 498. What is said in Thogmartin v. Nevada School District, 189 Mo. App. 10, 176 S. W. 472, cited by relator here, does not militate against this view, but accords with it."

Again, we quote the paragraph from the opinion, l. c. 817, which is pertinent to the question:

"We are not to be understood as attempting to pass judgment on the meaning of any of the sections of the Kansas City charter mentioned in this opinion, other than those directly involved in this case. What we do say is that, if the framers thereof had intended that all the land owned by all the public or quasi public entities mentioned in section 319 should be liable to special assessment for any

and all public improvements authorized by the charter, they could and certainly would have said so in clear, plain terms; and it seems they would have put the provision in that part of the charter defining the general powers of the city, rather than to have stated it in vague language in an isolated section dealing with 'Public Improvements.' It is extremely improbable they would have provided in article VI that special benefit assessments in condemnation proceedings should be made against private property, if they had meant by section 319 that all property, whether public or private, should be subject to assessment for that and all other public improvement purposes. At least it can be asserted with positiveness, and we so hold, that neither the general provisions of sections 1 and 3 of article I nor the ambiguous provisions of section 319 are sufficient to overcome the explicit limitations imposed by article VI. Public property belonging to a county, city, or school district will not be held liable to special assessment for public improvements, unless it is made so by express enactment or clear implication. City of Clinton, to Use of Thornton v. Henry County, supra, 115 Mo. loc. cit. 567, 22 S. W. 494, loc. cit. 495, 37 Am. St. Rep. 415; City of St. Louis v. Brown, 155 Mo. 545, 561, 56 S. W. 298, 301; Barber Asphalt Paving Co. v. St. Joseph, 183 Mo. 451, 457, 82 S. W. 64, 65; City of Edina to Use of Pioneer Trust Co. v. School District, supra, 305 Mo. loc. cit. 461, 462, 267 S. W. 112, loc. cit. 115, 36 A. L. R. 1532."

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Further authority which strengthens our ultimate conclusion may be found in the case of Normandy Consolidated School District v. Wellston Sewer District, 77 S. W. (2d) 477.

It is our opinion that the Board of Directors of the Hannibal School District is not compelled to appropriate money for the paving of streets in front of and adjacent to the public school property. The only possible exception is that the charter of the City of Hannibal might contain a provision, the writer not being familiar with the charter, or someother special enactment which would specifically make the school district liable.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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