

TAXATION: Question of right to collect taxes on newly ac-
quired territory by consolidated school district
SCHOOL DISTRICTS: discussed; assessor's duty to indicate district
where land is located in making out list; per-
sonal notice need not be given to owner of newly
acquired land; county superintendent's duty to
file plat of district with county clerk.

January 6, 1934.

FILED
SS

Mr. Walter G. Stillwell,
Prosecuting Attorney of Marion County,
Hannibal, Missouri.

*see that letter
Feb from [unclear]}*

Dear Sir:

We are acknowledging receipt of your letter of December
7, 1933, in which you inquire as follows:

"The opinion of this office has been requested
by the County Court of Marion County on a ques-
tion growing out of the following state of facts.

Some time ago school district 59 of Marion
County voted a consolidation and took in addi-
tional land in their district both in Marion and
Ralls County. In this call for the election they
included all of Section 36, Township 57, Range 5
which in the understanding of the leaders of the
consolidation was in their District. Two or
three owners of land in Section 36 were not
notified as it was the opinion of the school
board of District 59 that all of Section 36 was
in District 58 and this had been their under-
standing for years past. The assessor, however,
in checking back his records for the past twenty-
five years finds out that four tracts of land
in Section 36 have always been assessed in school
district 58. One C. W. Atkins, a property owner,
contends that for the past 42 years he has been
in school district 58, but the directors of the
Tilden school, which is known as school district
59, contend that his property is in their district
and it has always been in their district and
particularly so since the consolidation above
referred to. Several citizens representing the
Tilden school board appeared before the County
Court and sought to have this property changed
from district 58 to district 59.

1. Whose duty is it to set out opposite the
different tracts of land what school district
they are in?

2. If at the time district 59 became consolidated and increased the size of the district, whose duty if anyone's was it to notify Mr. Atkins of the fact that his property was in a new district?

3. Whose duty is it to make up a complete statement of the property comprising each individual school district in the County? Is this the County Superintendent of Schools duty, the Clerk of the County Court or the County Assessor's?"

We are also in receipt of your letter of December 28, 1933, in which you inquire as follows:

"On December 7th I wrote your office requesting an opinion concerning school district number 59 of Marion and Ralls County, Missouri. I have been requested to advise your office of the following additional facts that present themselves and which appear to be vital to your ultimate decision.

At the time district number 59 voted a consolidation and took in additional land in both Marion and Ralls County E. C. Bohon, County Superintendent of Schools, of Marion County, and Mr. Northcut, Superintendent of Schools in Ralls County advised with the directors of School District 59 about additional lands that were to be taken in and it was agreed by Mr. Bohon that the lands in question which were in section 58, township 57, range 5 and located in school district number 58 would not be disturbed.

An old map which is now in the County Collector's office at Palmyra shows the land in question to be in school district number 58. Submitting these facts with the facts mentioned in my letter of December 7th, we would appreciate your opinion on the questions asked in my former letter.

The County Court has also requested that I obtain your opinion on the following additional question growing out of the same subject matter.

4. The election touching the consolidation of district number 59, now known as Marion-Ralls Consolidated District number one, was held on June 5th, 1931. Because of the fact that all assessments are made as of June 1st of each year we would like to know when the school taxes of the newly acquired territory should rightly go

to Marion-Ralls Consolidated district number one? Were they entitled to it in 1931 or 1932, or 1933, as suggested by County officials?

I realize that this request is a difficult one, but the two schools in question have each retained counsel and are having serious difficulties concerning where the school taxes to the landin question should go. I would appreciate your opinion at your earliest possible convenience."

I.

Section 9261, R. S. Mo. 1929, among other things, provides as follows:

* * * "And it shall be the duty of the county assessor in listing property to take the number of the school district in which said taxpayer resides at the time of making his list, to be by him marked on said list, and also on the personal assessment book, in columns provided for that purpose."

X In answer to your first inquiry it is the duty of the County Assessor to set opposite the different tracts of land what school district they are in.

II.

In answer to your second inquiry we find no provision in the statute that requires any personal notice to be given Mr. Atkins of the fact that his property is included in the new district. Section 9353, R. S. Mo. 1929, provides how the plats and notices shall be posted, and when that provision of the statute is complied with it is not necessary that any personal notice be given to any resident of the proposed district.

III.

Section 9353, R. S. Mo. 1929, among other things, provides:

* * * "The county superintendent shall file a copy of the petition and of the plat with the county clerk and shall send or take one plat to the special meeting. * * * The county superintendent shall proceed as above set forth and in addition shall file a copy of the petition and of the plat with the county clerk of each county from which territory is proposed to be taken. * * *"

Under the foregoing section therefore, it is the duty of the county superintendent to file with the county clerk the plat which sets forth the limits and boundaries of the

district and the land contained therein. The foregoing section applied to consolidated schools. Section 9315, R. S. No. 1929, applies to common schools and is as follows:

"The district clerk shall record a copy of all reports made by him to the county superintendent. He shall also record in the record book of the district a correct plat of the district, changing the same as often as alteration is made in the boundary lines by the proper authority, and shall furnish the county clerk and county superintendent with copies of the same, and shall officially notify them of any change whenever made."

Under the foregoing sections therefore, if the district is a common school district, it is the duty of the clerk to file the plat with the County Clerk, and if the district is a consolidated district, it is the duty of the county superintendent to file the plat with the County Clerk.

IV.

In your fourth inquiry you inquire when the school taxes of the newly acquired territories should go into the Marion-Ralls Consolidated School District. It appears from your letter that this district was organized on June 5th, 1931.

Taxes are assessed to the owner as of June 1st of each year and that valuation is the valuation upon which taxes are collected during the next year. The assessment, as made by the County Assessor, however, is not, in contemplation of law, the complete assessment. The Assessor merely lists the property of each taxpayer and places a valuation thereon. The assessment is not completed therefore when the assessor makes his valuation. After the assessor lists the property and places a valuation thereon, there must be a levy by the taxing authority and the extension of the levy upon the valuation as made by the assessor. The answer to your inquiry, we believe, depends not so much upon the time of making the valuation as it does whether there was an actual levy made and by whom the levy of taxes was made.

As the Marion-Ralls District was not organized until June 5th there was no land in the district on June 1st. However, when this consolidated district was organized on June 5th it withdrew from certain other districts land which had previously been therein. It is evident that the land which was in the various districts on June 1st, 1931 was not in those districts at the time the actual levy was made. The newly acquired territory having been withdrawn from the old districts prior to the time the levy was made, the County Clerk should have made the levy in favor of the consolidated school district in extending his tax books, because the land was in the consolidated district at the time of making the levy.

In State ex rel. v. Buford, 82 N. A. 343, 348, it is said:

"It is quite difficult to understand after the subtraction of these sections from said districts, how the respondent could assess the estimates of the latter against the real and personal property in the former. The clerk is required by the provisions of section 8067 Revised Statutes 1889, to assess the amount of the estimates returned to him by the districts on all taxable property, real and personal, therein. He is without power to assess the property of one district with the amount of the estimate of another."

In State v. Consolidated School District, 238 S. W. 819, the question arose as to whether the consolidated school district could function as such until June 30th after its organization. The Court at page 821 says:

"Suppose it be, as relators urge, that the consolidated district could not function until June 30th after its organization. The old districts were absorbed into the consolidated district on October 22, 1930, and thereafter had no power to do anything except to finish the business then under way, and at the end of the school year, June 30th, make the turn over as required by section 11262. There would be no annual meeting of the old districts, because they would have no powers left except to continue as provided in section 11262. If the consolidated district could not function till June 30th, there are many things that it might not do then, because certain things are required to be done at the annual meeting, and the statute fixes the annual meeting on the first Tuesday in April."

The consolidated school district, therefore, became an active organized district as of June 5th, 1931. We assume that they took proper steps and did make a levy upon the property within the district. If they made a valid levy and the clerk extended the taxes on the basis of that levy, then we believe that the district is entitled to the taxes on the newly acquired land which were payable in 1932. It would therefore be entitled to the taxes on the newly acquired land for the year 1933 also.

However, whether or not the consolidated school district would be entitled to taxes levied for the consolidated school district depends upon whether there was an actual levy made.

In State ex rel. v. Young, 38 S. W. (2d) 1021, an action was brought to collect school taxes. District No. 2 of Camden

and Laclede Counties was formed by an election held on June 19, 1925, at which time its board of directors ordered an election to be held on July 10, 1925, for the purpose of voting a 65¢ levy on the \$100.00 valuation for school purposes and for a nine months term for said consolidated district. The suit was to enforce a lien for taxes for the year 1925. The court held that the district could not collect the taxes because there was not a sufficient levy, saying:

"It is apparent from the foregoing review of the evidence that the levy and extension of school taxes against defendants' land on the county tax book for 1925 was void for the reason that no estimate or certification of school taxes by or for consolidation school district No. 2 of Camden and Laclede counties, which were the taxes sued for, was filed with the county clerk, as required by sections 11183 and 11151, R. S. 1919, and the trial court properly in effect so found. It also appears that the only estimate or certification of school taxes for the year 1925 that might have become a lien on defendants' land was the estimate of common school district No. 82, and the county clerk did not use this estimate in levying and extending school taxes on the tax books. The trial court erred in treating this as having been done."

In view of the foregoing decision, it is apparent that the statutes regarding the levy and estimates must be complied with, otherwise the levy is not legal. There could be no levy by the consolidated district on taxes that were due in 1931 because the district was not in existence at the time the levy should have been made. Any levy which was made upon the newly acquired land for taxes due in 1931 was made upon the estimate submitted by the various districts in which this newly acquired land was then found. We believe, therefore, that the taxes payable in 1931 on the land recently taken into the consolidated district should go for the benefit of the districts from which the land was taken. If, however, the consolidated district took proper steps to submit their estimates and have their levy made and the taxes extended on the newly acquired property, they would be entitled to the taxes thereon which were payable in 1932 and subsequent years.

It is therefore our opinion that the question as to whether the tax money should go to the consolidated district or not depends on whether or not, after the organization, they took the necessary steps in submitting their estimates and having taxes levied and extended on the newly acquired property. If the consolidated district did take the necessary

steps, then it is our opinion that they would be entitled to collect the taxes on the newly acquired territory which were payable in 1932 and 1933. The consolidated school district would not be entitled to the taxes due in 1931 which were based upon the estimate and levy of the old districts wherein the land was found and which were made prior to the time that the consolidated school district came into existence. If, by chance, the consolidated school district did not take proper steps to have the levy made in its favor and the taxes extended for 1932 and the taxes on the newly acquired land for 1932 were based upon the estimate furnished by the old districts, then we believe that the old districts would be entitled to the taxes for 1932.

Your inquiry did not give us sufficient information as to the levying of these taxes by the old and new districts, and we hope, by using the various assumptions, we have been able to answer your inquiry.

Very truly yours,



Assistant Attorney General.

FWH:8

APPROVED:

Attorney General.