

TAXATION:- Section 1, Laws of Missouri 1931, page 349,
SCHOOL DISTRICTS:- is not unconstitutional as being in conflict
with Section 6 of Article X, which exempts
school property from general taxes.

June 16, 1934.



Mr. Walter G. Stillwell,
Prosecuting Attorney,
Hannibal, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in
which you inquire as follows:

"I have been consulted by the president of the Hannibal School Board relative to the constitutionality of Section 1 of an act relating to the erection, construction and maintenance of sewers — assessment of cost, etc., which said statute is found on page 350 of the Laws of Missouri, 1931.

"The City of Hannibal by virtue of an ordinance has taxed the Hannibal School District their pro-ratio amount for the installation of sewers and the school board has been advised by competent counsel that the above mentioned section is unconstitutional in that it attempts to levy a tax or assessment on school property.

"Your usual prompt attention would be appreciated in this matter because there is a possibility that the holders of these tax or assessment bonds will institute legal proceedings for their collection."

Section 1, Laws of Missouri 1931, page 350,
is as follows:

"All real estate owned by any school district of this state, shall be subject to the provisions of all ordinances of any city, town or village of this state, which relate to the erection, construction and maintenance of sewers and sewer systems, and of sidewalks, guttering, curbing and paving of the streets and alleys adjoining and abutting the real estate of said school districts and to the assessment of the costs thereof,

to the same extent as that of private citizens of this state."

You state that the City of Hannibal, pursuant to the authority contained in the foregoing section, has sought to subject school property to assessments for the purpose of maintaining sewers. You inquire whether or not Section 1 of the Statute is constitutional. We assume that you have in mind in making this inquiry, Section 6 of Article X of the Constitution, which is as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

The Courts in construing Section 6 of Article X have generally held that it only applies to general taxes which are used for the support of the city, county and state governments and that the exemption in the Constitution was not intended and does not include special assessments or benefits.

In *Mullins v. Cemetery Association*, 239 Mo. 681, it was contended that a cemetery association was exempt from taxation by reason of the provisions of Section 6 of Article X. A suit in that case was brought upon sewer bills and the court said at page 687:

"It is provided by section 6, article 10, of the Constitution of this State that: 'The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation.' The law is too well established by require the citation of authorities that the exemption from taxation in the foregoing

section of the Constitution has reference to general taxes, levied and collected for the support and maintenance of the State, and not to special taxes assessed to pay the cost of local improvements. The correctness of this proposition is not contested by respondent. It rests its claim, that its property is exempt from liability for the taxes sued for, upon a statute hereinafter discussed."

Again in *Houck v. Drainage District*, 248 Mo. 373, in discussing the right of a drainage district to collect an assessment, the court, in discussing the above constitutional provision, says at page 383:

"That the special taxes they are authorized to levy and collect upon and for the benefit of the lands included in their districts do not come within the provisions of article 10 of the State Constitution invoked by the appellants, has long been settled, and has passed from the realm of legitimate discussion."

In *Corrigan v. Kansas City*, 211 Mo. 608, it was held that Section 6 of Article X did not apply to special assessments. The court says at page 627:

"Section 3, article 10, of the State Constitution requiring taxes to be uniform, and sections 6 and 7 of the same article, the one exempting properties of certain kinds and the other forbidding any other exemptions, refer only to general taxes; those sections neither exempt nor forbid the exemption of properties from special assessments for local improvement. If the legislative department of the State government or that of the city government should make an arbitrary selection of property to be taxed for the benefit of the whole district, omitting other property of like kind and used for like purposes, there are other clauses of both State and Federal constitutions that could be applied to prevent such inequality, but this is not such a case; here all properties of the same class are omitted from the assessment. The classification here shown is not beyond the legislative discretion of the Common Council."

In view of the foregoing decisions we believe that

the Legislature had a right to authorize cities to levy special assessments against the properties of schools. Section 6 of Article X, quoted above, has been construed to apply only to general taxes and has been construed to apply not to special taxes or special assessments. Such being true, that section is not violated when the Legislature authorized cities to collect special assessments from school districts. It is also apparent, in view of the Corrigan case above, that so long as the Legislature authorized the levying of a special assessment against all of a particular class that the Act is not unconstitutional because it exempts other classes.

It is therefore the opinion of this Department that Section 1, Laws of Missouri 1931, page 349, is not unconstitutional as being in conflict with Section 6 of Article X of the Constitution, which exempts school property from general taxes.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

FWH:MS