

SCHOOLS:) Distributable property of railroads and similar
) utilities is ascertained by the average rate
TAXATION:) levied for taxation.

11-25

November 23, 1935.



Hon. J. R. Oliver
Clerk of the County Court
Dunklin County
Kennett, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Will you kindly advise me in the following matter?

"The average school tax rates as determined in accordance with Section 10,029-1929 Statutes for This County is \$1.15 per \$100.00 valuation.

"Two Railroads whose lines extend into this county had representatives examine tax estimates of schools in the County submitted to this office, who reported that the average tax rate necessary to operate the schools is only \$.81 per \$100.00 valuation, distributed among the several funds as follows:

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|----------------------------|------------|
| "Teacher's and incidentals | \$.51 |
| Building fund | .04 |
| Sinking fund | .15 |
| Interest fund | .11 |
| Total | <u>.81</u> |

"The County Court, by its order has fixed the rate for school purposes to be extended against railways, railroads,

utilities, and telephone and telegraph companies at the rates reported to be the amount needed, as determined by the representatives of the said railroads.

"The discrepancy that will appear between the tax rate charged against real estate and personal property, and the distributable property of railroads, utilities etc. seems to me to be discriminatory and contrary to the act above referred to."

Distributable property of railroads and other similar public utilities is assessed by the Missouri State Tax Commission by virtue of Section 9854, paragraph 6, R. S. Mo. 1929.

Section 10029, R. S. Mo. 1929, provides how taxes for school purposes are levied on distributable property of railroads. It is controlling and specific and must be complied with by the county courts. The distributable property of railroads is assessed by the Tax Commission and certified back to the counties and the amount so certified is prorated to each district regardless of whether the railroads' physical property touches the district.

We quote Section 10029, supra, in part as follows:

"For the purpose of levying school taxes, and taxes for the erection of public buildings, and for other purposes, in the several counties of this state, on the roadbed, rolling stock and movable property of railroads in this state, the several county courts shall ascertain from the returns in the office of the county clerk the average rate of taxation levied for school purposes, and also the average rate of taxation levied for the erection of public buildings, and for other purposes, each separately, by the several local

school boards or authorities of the several school districts throughout the county. Such average rate for school purposes shall be ascertained by adding together the local rates of the several school districts in the county, and by dividing the sum thus obtained by the whole number of districts levying a tax for school purposes, and shall cause to be charged to said railroad companies taxes for school purposes at said average rate on the proportionate value of said railroad property so certified to the county court by the state auditor, under the provisions of this article, and the said clerk shall apportion the said taxes for school purposes, so levied and collected, among all the school districts in his county, in proportion to the enumeration returns of said districts. Such average rate levied for the erection of public buildings, and for other purposes, shall be ascertained, each separately, by adding together the local rates of the several districts in the county levying a tax for the erection of public buildings, or for other purposes, and by dividing the sum thus obtained in each case by the whole number of districts in such county; and the clerk shall cause to be charged to said railroad companies taxes for the erection of public buildings or for other purposes, at said average rate on the proportionate value of said railroad property so certified to the county court by the state auditor, under the provisions of this article, and the county court shall apportion the said taxes for the erection of public buildings, or for other purposes so levied and collected, among the several

school districts levying such taxes,
in proportion to the amount of such
taxes so levied in each of said
districts: * * * * *

Your letter states, "The average school tax rates as determined in accordance with Section 10,029-1929 Statutes for This County is \$1.15 per \$100.00 valuation." However, the county court took estimates as compiled by representatives of two railroads, showing "that the average tax rate necessary to operate the schools is only \$.81 per \$100.00 valuation" and made an order that \$.81 was all that should be extended in each school district for school tax purposes. In other words, if we understand the facts, the average school tax levied is \$1.15, while the county court provided in its order that only \$.81 was necessary to operate the schools.

The duty upon the county court is to take the average of the taxes levied in all school districts and not the average of what might be necessary to operate the schools. And if the county court by its order arrived at the figure of \$.81 by a method of calculating what was necessary to operate the schools, said order was without authority of law and contrary to and violative of Section 10029, supra, in our opinion.

The only thing the county court has to do relative to fixing the rate of taxation for school purposes against distributable property of railroads and public utilities is to take the rates levied in each district and add them together and strike an average. There is a vast difference between what rates are levied in each district and what rates may be necessary to operate the school. The statute says "the several county courts shall ascertain from the returns in the office of the county clerk the average rate of taxation levied for school purposes."

In concluding this opinion we do not wish you to be under the impression that we are ~~not~~ approving the average school tax rate in Dunklin County of \$1.15 per \$100.00 valuation. We merely take your figure of \$1.15 per \$100.00 valuation as the average rate and trust that same was arrived at in conformity with the Constitution. We call attention to said fact in view of the case of State ex rel. Kersey, Collector v. Western Union Telegraph Co., 263 S. W. 419, 1. c. 420, wherein the court said:

"The school tax rate was fixed by the county court at 146 cents per \$100 of valuation shown on the railroad tax book, in attempted compliance with section 13031, R. S. 1919. Among the 53 school districts which filed certificates with the county clerk, there appear several levies which are indisputably in excess of the largest rates permitted by the Constitution. For instance, in district No. 5 the record shows there had been an attempt to vote a tax of 120 cents per \$100 valuation for ordinary school purposes. The board attempted to levy the full amount of this, as well as a much larger rate for building fund, sinking fund, and payment of accrued interest. Counsel contends the rate first mentioned was 20 cents too high, and in this he is correct. Harrington v. Hopkins, 288 Mo. 1, 231 S. W. 263. The record shows like excess levies in several other districts. It is contended there are still other districts in the same condition, but the summaries are not full enough to show the amounts of the excesses in these in such way that the lawful rate can be separated from the unlawful. Even if it be held that the circuit court could reduce the levy so as to exclude parts of rates in excess

of constitutional limits (State ex rel. v. Railroad, 149 Mo. loc. cit. 644, 645, 51 S. W. 479), yet this court cannot substitute a new average rate because the record does not give all the necessary information. Enough appears to show the average rate used is excessive because levies exceeding constitutional limitations went into it. There is a remedy provided by the statute, but it is not available in this suit to sustain the present levy. The judgment as to school taxes cannot be upheld."

See also: *Harrington v. Hopkins et al.*, 251 S. W. 263.

In *State ex rel. School District v. Waddill*, 52 S. W. (2d) 476, the Supreme Court of Missouri, page 479, said the following:

"There is no conflict, however, between the general language and the specific provision. Private property lying in different school districts is rarely taxed for school purposes at the same rate. The property of A situated in school district No. 1 may be taxed at the rate of \$1.15 on the \$100 valuation; that of B in school district No. 2 at only 40 cents. In order to determine the extent to which the property in all school districts in a county, considered en masse, is taxed for school purposes, the average of the rates which obtain in the several school districts must be accepted as the gauge. And so the aggregate value of the property of a street railroad company, apportioned to a county to be taxed for the benefit of all the school districts in the county, when

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taxed for school purposes at the average rate, is subjected to taxation for those purposes to the same extent as the property of private persons."

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

JLN:EG