

SCHOOLS: Property of railroads and similar utilities:

Method of ascertaining the assessment next before the last assessment and the valuation of distributable property of utilities in a school district as being a basis for a school bond issue.

August 6, 1937

Mr. George H. Miller
Prosecuting Attorney
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Dear Mr. Miller:

This will acknowledge your request of July 19, wherein you requested an opinion of this department, your letter being as follows:

"Section 9199 of the 1929 Statutes provides that a school loan shall not exceed five per cent of the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and County purposes previous to the incurring of said indebtedness.

"Would it be possible in voting bonds this year to base the five per cent on the 1934 assessment instead of 1935?

"Our railroad and utility tax comes in one lump sum and then is apportioned to the schools, being based on enumeration but no valuation is set off to any certain district. In valuing these utilities, how could one district arrive at a valuation to be added to the rest of its taxable property for the purpose of voting bonds?

"Thanking you very much, I am."

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I

Your first question is based upon Section 9199, Revised Statutes Missouri 1929, which is, in part, as follows:

"The loan authorized by the preceding section shall not be contracted for a longer period than twenty years, and the entire amount of said loan shall at no time exceed, including the present indebtedness of said district, in the aggregate five per cent. of the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes previous to the incurring of said indebtedness, the rate of interest to be agreed upon by the parties, but in no case to exceed the highest legal rate allowed by contract; * * "

The clause included in said section "to be ascertained by the assessment next before the last assessment for state and county purposes previous to the incurring of said indebtedness," is construed in the case of Steinbrenner v. St. Joseph, 285 Mo. l. c. 329 (first paragraph), wherein the court uses the following language:

"We have above noted that the word 'assessment' as used in the Constitution means a completed assessment. The assessment which began in June, 1918, was not completed by the State Board of Equalization until September, 1919, so that at the time the city was acting in this bond matter, this was no assessment at all, or to be used for any purpose in this case.

In May, 1919, the first preceding completed assessment was that of 1917, or the one begun in June, 1917. 'The assessment next before the last assessment,' using the language of the Constitution, could be none other than the assessment begun in June, 1916, and completed sometime in 1917."

Under Section 9779 R. S. Mo. 1929, "Real Estate shall be assessed at the assessment which shall commence on the first day of June, 1893 and shall be required to be assessed every year thereafter."

Under Section 9800 R. S. Mo. 1929, "The Assessor shall make out and return to the County Court on or before the 20th day of January of every year, a fair copy to the Assessor's book, and the Clerk of the County Court shall immediately make out an abstract of the assessment book and forward the same to the State Auditor, to be laid before the State Board of Equalization."

Under Section 9862 R. S. Mo. 1929, "The State Board of Equalization shall meet at the Capitol in Jefferson City on the last Wednesday in February, 1894 and every year thereafter to equalize the valuation of the real property."

The State Equalization Board has not yet completed the assessment for the year of 1936. In speaking on this question, the Supreme Court in the case State ex. rel vs Gordon, 251 Mo. l. c. 309, said, "The assessments designated in the constitution as necessary to be considered in determining the per centum of indebtedness, mean the two successive, antecedent, completed assessments made by the State Board of Equalization previous to the incurring of indebtedness. This must be true for until the State Board of Equalization

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zation has completed its labor, the total amount of taxable property in a subdivision cannot be determined."

Therefore, it is the opinion of this department, under the rule of law above stated, that the assessed valuation for the year 1934 will be the basis to be used in determining the amount of indebtedness which could be incurred by the school district.

II.

In your second question you ask "In valuing these utilities, how could one district arrive at a valuation to be added to the rest of its taxable property for the purpose of voting bonds?"

In voting utilities we must recognize two classes: first, distributable; second, local. For instance, the first, applied to railroads, consists of the roadbed, rolling stock and other movable property. This class is returned by the corporation to the Auditor, assessed as an entirety, en masse, by the State Board of Equalization, and the value thereof apportioned to the several counties, cities, towns, villages and municipal townships in which such railroad is located, and the assessment certified to the county court.

The other class, which may be designated as local property, embracing all other property of such railroads and which is not returned to the Auditor, is assessed by the local authorities as other local property is assessed. See Sections 10012-17-22-24-25-28 and 29 of the 1929 statutes.

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Upon these assessments the county court levies the taxes authorized by law.

Your questions relate to the first class, which is designated by court decisions as being distributable or tangible property.

Taxes for school purposes are directed to be levied at an average rate on distributable property. Section 10029, 1929 statutes, provides:

"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 district."

In construing said statute the Supreme Court, in the case of State v. Waddill, 52 S. W. (2d) 1. c. 479, said:

"Stated more concisely, the method prescribed by statute for the assessment and taxation of the distributable property of a railroad company is this: The state tax commission shall assess

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the aggregate valuation of such property, regardless of its location in this state. The state board of equalization shall then equalize such aggregate valuation and apportion it, on a mileage basis, to the counties, municipal townships, cities, and towns in which the property or some part of it is located, and certify the result of its action to the county courts of the proper counties. On the aggregate value apportioned to a county, the county court of such county shall levy taxes for county purposes at the same rate levied on other property in the county for such purposes; on the apportionments made to municipal townships, cities, and towns, respectively, it shall levy taxes at the same rates levied on other property within the territorial boundaries of those subdivisions and agencies for their respective purposes; and on the apportionment made to the county it shall make a further levy of taxes for school purposes - at the average rate as heretofore defined. The school taxes so levied shall be distributed when collected, not on a mileage basis to the school districts in which some part of the railroad is located, but to all the districts in the county, the fund to be apportioned among them according to their enumeration returns.

"A reading of the three sections relating to the assessment and taxation of the property of street railroad companies in connection with those prescribing the method for the assessment and taxation of the property of other railroad companies leaves no doubt but that the property of the former, as described in said section 10019, is required to be assessed,

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apportioned, certified and the taxes thereon levied' in the manner prescribed for the assessment and taxation of the distributable property of the latter. With respect to the manner so prescribed, there is no provision for the state tax commission to separately assess for each school district into which a street railroad extends the part of the property of the company owning the road which is located in such district. Nor is there any for the state board of equalization to make apportionments of the aggregate value to school districts. On the contrary, the affirmative provisions of the statutes negative the doing of either of these things. It follows that the questions touching the duties of the tax commission and the state board of equalization respectively, as heretofore stated, must be answered in the negative."

Under Section 9854 (6), Article 4, Chapter 59, in 1929 statutes, other utilities would be assessed in the same manner as said railroad property.

Under the Constitution (Section 12, Article X), a school district can issue bonds not exceeding "five per cent of the value of the taxable property therein," and where such distributable property of the railroad or utility does not touch a particular school district we do not see how any part of the valuation of said property can be said to be within the particular school district.

The court, in *State v. Waddill*, supra, held:

"there is no provision for the state tax commission to separately assess for each school district into which a street railroad extends the part of the property of the company owning the road which is located in

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such district. Nor is there any for the state board of equalization to make apportionments of the aggregate value to school districts."

CONCLUSION

Therefore, it is the opinion of this department that the distributable public utility property that is not within the school district can not be considered as a part of its taxable property for the purpose of serving as a basis of a bond issue.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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SVM:LC