

PROSECUTING ATTORNEYS: It is not the duty of the prosecuting attorney to bring suits in behalf of the parents of students against the school district.

October 9, 1937

10-9



Mr. Mark W. Wilson
Prosecuting Attorney, Henry County
Clinton, Missouri

Dear Sir:

This department is in receipt of your request for an opinion which reads as follows:

"We are having some trouble in the County over tuition being paid by districts to the high schools. The parents of the children in some of the districts wish to file suit against the districts. They feel that I should represent them in an official capacity. I could find no law to that effect and told them so."

Section 11316, R.S. Mo. 1929, provides in part as follows:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or county; and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses."

Section 11318, R.S. Mo. 1929, provides in part as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before justices of the peace, when the state is made a party thereto:"

It will be noted that it is the duty of the prosecuting attorney to defend only such suits in which the county or state may be concerned or interested.

From the facts presented in your request, it seems that it is the parents of the children who wish you to represent them in the suit against the district. This is not a matter in which "the county or state may be concerned", nor is it one "in which the county is interested". We believe the rule is aptly stated in *State ex rel St. Ferdinand Sewer District vs. McElhinney*, 52 S.W. (2nd) 400 from which the S.C. of Missouri en banc said:

"While said injunction suits were instituted by the prosecuting attorney of St. Louis county in the name of the state, it appears from the allegations and prayers of the petitions therein that said suits were, in fact, instituted in behalf of the taxpayers in said sewer districts and for the protection of the property rights and interests of said taxpayers. No property right or pecuniary interest of the state would be affected by any decree that could be rendered in said suits, and

no condition affecting the safety, health, or morals of the public is involved in said suits. True, suits by the state in its own behalf are not limited to those in which its property rights or pecuniary interests are involved, but certainly such suits are limited to those in which public rights or interests, as distinguished from private rights or interests, are involved. So, our conclusion is that said injunction suits are not suits instituted by the state 'in its own behalf,' within the meaning of the statute above quoted."

CONCLUSION

It is, therefore, the opinion of this department, that in view of the above authorities, that it is not the duty of the prosecuting attorney to represent the parents of students in a suit against the school district to require the payment of tuition.

Respectfully submitted,

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APPROVED By:

J.E. TAYLOR
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