

SCHOOLS: Property of school districts exempt from taxation, said districts being municipal corporations.

May 22nd, 1939.



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Hon. Edgar H. Wayman,
City Counselor,
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Gentlemen:

As suggested in your respective letters dated February 21, 1939 and March 9, 1939, we have gone over the opinions submitted by you on the question of the liability for taxation of certain property owned by the school district of the City of St. Louis. We have examined the authorities cited in both opinions. We are of the opinion that the brief submitted on behalf of the Board of Education is the better reasoned brief, and we adopt the opinion as arrived at in said brief as our opinion upon the question.

In doing this, we might make some observations.

One of the principal cases relied upon by the City is the case of State ex rel. v. Gordon, 231 Mo. 547. It is true in this case the court did say in the course of the opinion that a school district was not a municipal corporation with diversified powers. We think the language in that particular was obiter for the reason that it was not necessary to a decision of the case to determine whether a school district was or was not a municipal corporation. That part of the opinion was trying

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to point out why there would be less likelihood of voters at a bond election for school purposes being confused by a doubleness in propositions to be voted upon than there would be in elections in cities and towns, for the reason that cities and towns had many diversified powers, such as the power to build electric light plants for city use and for the manufacture and sale of electricity, light and power to consumers, the power to buy and ornament parks, to exercise the right of eminent domain and many other powers which could be exercised when authorized by a vote of the people. The opinion was trying to point out that with school districts there was only one single broad purpose which could be voted upon by the voters of the district and that was the purpose of furnishing education and increasing the facilities therefor.

After making the contrast between elections of cities and towns and elections in school districts, the court said, l. c. 575:

"In a field so circumscribed, doubleness in propositions is not so likely to arise as in the larger and more diversified field of municipal activity."

For these reasons, we do not think the foregoing case is authority for the proposition that school districts are not municipal corporations in the sense that the words "municipal corporations" are used in the Constitutional provision regarding exemptions of the property from taxation.

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Another case relied upon by the City is the case of State ex rel. v. Board of Directors of St. Louis Public Schools, 112 Mo. App. 213. The question being discussed in that case was whether or not the election of a school director in the City of St. Louis was an election by the people. In the course of the opinion the court commented that the school district was not a municipal corporation proper but was a quasi municipal corporation. We do not believe that the foregoing comment by the court was necessary to a determination of the question being considered. Certainly an election of a director would be an election by the people whether the school district was a municipal corporation in the strict sense of the word, or whether it was a municipal corporation in the broader sense of the word, which is pointed out and adopted by the Supreme Court in the case of Caldwell v. Little River Drainage District, 291 Mo. 72.

Another case mentioned in the brief submitted on behalf of the City of St. Louis is the case of Burton Machinery Co. v. Ruth, 194 Mo. 194. In that case the court said that a city school district was a body corporate, but in the course of the opinion, l. c. 196, the court said:

"It is clear that since materialmen and laborers have no lien for their material furnished or work done for one contracting with a school district, or other similar corporation, the section of the statute which we have just quoted

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was intended to be a protection to the classes which would otherwise be protected by our mechanic's Lien law."

It will be seen from the foregoing expressions that a school district was classed along with corporate bodies mentioned in the statutes being considered. Such other corporate bodies were counties, cities, towns, townships and road districts. If the obiter statement has any weight, we think it might well be authority for classification of a school district in the same category as a county, city or town.

We think that in addition to authority cited in the brief submitted on behalf of the Board of Education, reference to the Constitution of Missouri will show that the words "municipal corporation" as used in Section 6 of Article 10, should be given the broader meaning as suggested in the case of Caldwell v. Little River Drainage District, supra. It will be noted that in said section of the Constitution "the property, real and personal, of the state, counties and other municipal corporations * * * * *, shall be exempted from taxation." A county is not a municipal corporation in the strict sense of the word as pointed out in the case of Heller v. Stremmel, 52 Mo. 309. We think, therefore, that it is significant that the word "other" is used in the foregoing section of the Constitution.

We call attention also to various other sections of the Constitution wherein counties, townships and cities are referred to as municipalities, to wit:

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"No county, township, city or other municipality * * * * *."
(Sec. 6, Art. 9).

"The corporate authorities of any county, city, or other municipal subdivision of this State * * *" (Sec. 19, Art. 9).

"The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes."
(Sec. 1, Art. 10).

"The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."
(Sec. 10, Art. 10).

"The General Assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to

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this State, or to any county or other municipal corporation therein." (Sec. 51, Art. 4).

There are other provisions of the Constitution in which the language places counties in the same category as municipal corporations. We think, therefore, that the language of the Constitution clearly shows that when the words "municipal corporations" are used they do not mean municipal corporations in the strict sense of the word, and apparently this was the theory of the court in the case of Caldwell v. Little River Drainage District, supra. If a drainage district can be classified as a municipal corporation without doing violence to the Constitution, then we think that a school district can be so classified without any fear that the meaning of the Constitution is being subverted.

A good portion of the revenue which supports public schools comes from the state, and if a part of that revenue must be taken to pay taxes, the state would in effect be subjecting itself to taxes. We do not want to be understood as saying that school districts can acquire property and hold it indefinitely free from taxation unless the property is actually put to use for educational purposes. From the facts as outlined in the date submitted to us, we understand that the property in question has been acquired by the school district for the purpose of use in the educational program of the district. The mere fact that it is not put to immediate use does not, in our opinion, subject it to taxation, but this is not saying that a school district could acquire property without an honest intention of using it for

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educational purposes and still claim exemption
of the property from taxation.

Yours very truly,

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APPROVED:

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HHK/rv