

TAXATION: Taxation of Railroads  
and Utilities for  
school purposes.

January 23rd, 1939.



Mr. Thomas A. Mathews,  
Prosecuting Attorney,  
St. Francois County,  
Farmington, Missouri.

Dear Mr. Mathews:

This will acknowledge receipt of your communication requesting an opinion from this office, which request is as follows:

"Would be pleased to have your legal opinion on the matter of taxation of utilities. The various companies such as railroad, telegraph, electric light, gas and other similar corporations managing utilities in St. Francois County have informed the County Court that they will not pay more than 60% as an average on their properties, for the support of the public schools as this was sufficient for prior years.

"Some of the principals and teachers of the public schools in this county are asking that the percentage on utilities be raised to 71 1/54%, although they have not shown that this increase was necessary.

"I assume that this question has to do with Section 10009, Revised Statutes of 1929.

"Kindly advise whether the position of the various utilities operating here is correct."

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In your letter you mentioned two percentage figures, namely 60% and 71 1/54% that the contending parties seek to apply in some manner in reaching the results contended for. It is not clear to us from the context of your letter, whether the parties are applying this percentage factor to the assessment feature of the property involved, or whether to the rate of taxation to be levied. Hence, we will have to deal with your question on a hypothetical basis.

Furthermore, a break-down is necessary, both as to the assessment and rate of levy features, because by court construction, a distinction is made by what is classed as the "distributable" and "local" property of railroads and other utilities.

In this connection we refer you to the case of State ex rel v. Baker, 316 Mo. 853, where a full discussion is shown concerning the distinction in the class of property mentioned.

#### I.

##### Assessment of Distributable Property.

The distributable property (including Franchise) of railroads and other utilities owned throughout the state, is required by statute to be assessed by the State Tax Commission, subject to correction by the State Board of Equalization at the true value of the property. The value arrived at by and through said boards is certified to the various County Clerks on an apportionment basis and is final, unless corrected or set aside by proper court action. Hence, if the parties you refer to are attempting by their percentage figures, to fix on their own initiative, some other or different assessed valuation of the property involved for taxation purposes, then such attempt is nugatory and amounts to nothing.

#### II.

##### Assessment of Local Property.

The "local" property of a railroad and other utilities, is assessed by the local county assessor in the same manner as all other property located in a county is assessed. Under Section 9799, county property is required to be assessed at its true value, which has

been constructed to be the value placed on property by the assessor subject to correction by the county or state Board of Equalization (see State v. Bethards, 9 S. W. (2d) 603). However, when the assessment is completed the value as determined is a fixed one and is final, unless set aside by court decree, and constitutes the basis upon which the rate of tax is levied.

Consequently, if either of the parties you refer to are attempting to use only a fractional part - whether it be 60% or 71 1/54% - of the assessed value, as finally determined and fixed by the assessing authorities, for the basis upon which the tax should be levied, then such attempt is likewise nugatory and amounts to nothing as in the case of distributable property.

### III.

#### Rate of Taxation on Distributable Property.

The method used to determine the rate of taxation to be applied to the distributable property for school purposes is provided for in Section 10029, the pertinent part of which is as follows:

\* \* \* \*. 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. \* \* \*"

See State ex rel. v. Waddill, 330 Mo. 1. c. 1125, for an exposition of the aforesaid statutory method.

The average rate provided for is arrived at merely by mathematical computation. However, such average rate is expressed and levied in money denomination, to wit: so many dollars or cents on the \$100.00 valuation, and is not expressed or levied on any percentage basis. Hence, if the parties referred to in your letter are attempting to arrive at, or apply, an average rate on a percentage basis, such an attempt would be nugatory, notwithstanding the respective reasons given therefor.

#### IV.

##### Rate of Taxation on Local Property.

The method used for determining and levying the rate of taxation on the "local" property for school purposes is the same as used in the taxation of the property of private persons, located within the boundaries of a particular school district. The rate is determined and fixed by the school board in accordance with its return to the county clerk. In State ex rel Railroad Company, 110 Mo. 1. c. 272, the court said:

"The court also erred in holding defendant liable for taxes, for school purposes and building purposes on its local buildings, at the average rate throughout the county. The buildings of a railroad company are subject to taxation like other property at the local rates fixed in the districts where they are situated."

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The rate is expressed and levied in dollars and cents and not on a percentage basis; and any rate, average or local, levied on the assessed valuation on a percentage basis would be nugatory.

#### CONCLUSION

In conclusion, it is manifest, in view of the statutes of the state providing a complete scheme for the manner of assessment and rate to be applied, for the taxation of the property of railroads and other utilities for school purposes, that any attempt on the part of either one of the contending factions you mention, to use as a basis the respective contentions made for arriving at the amount of taxation which should be paid by the utilities in question, would be null and void.

APPROVED BY

Respectfully submitted,

J. E. TAYLOR  
Acting Attorney General

J. W. BUFFINGTON,  
Assistant Attorney General.

JWB:RV