

STATE AUDITOR:) Under Section 2917, R. S. 1929, the State Auditor
SCHOOLS:) is compelled to certify the amount of tax needed
) for the payment of coupons, but it is not his
) duty to make the levy; such duty falls on the
) school board.

April 3, 1940

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83

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This Department is in receipt of your letter of March 25th, wherein you make the following inquiry:

"Acting in my capacity as State Auditor, I wish to submit to you, for your opinion, a question which has arisen concerning the powers and duties of this office in connection with the levying of taxes required to pay principal and interest of school bonds duly issued by a school district in the State, payment of said principal and interest being now in default.

"The facts as I understand them are as follows:

"A school district in St. Louis County had outstanding five bond issues, aggregating \$67,000 principal amount. A part of the district had almost entirely a white population, and another part of the district had a colored population. By action duly taken the school district was divided and two new school districts were created out of the territory of the original district. One of said new districts, embracing the white population, can be designated as the

B School District, and the other new district, embracing the colored population, can be designated as the K School District. Both districts are city or town school districts, each district having six directors.

"At the time of the division of the original school district and the formation of the two districts, it was agreed that sixty per cent of the bonded indebtedness of the district should be assumed by the new B School District and that forty per cent of such outstanding indebtedness should be assumed by the new K School District.

"The B. School District has refused to pay its sixty per cent of the outstanding bonded indebtedness now due, contending that the K School District has collected and appropriated certain funds (approximately \$8,000 to \$10,000) which should be paid into the sinking fund of the B. School District. The K School District refuses to make such payment but expresses its willingness to abide by its agreement to assume and pay forty per cent of the bonded indebtedness of the original school district. As said above, a portion of the principal of said indebtedness is now past due and a substantial amount of interest has also accrued on the bonds of the original district.

"Certain bondholders owning bonds of the original school district have requested this office to act pursuant to the provisions of Section 2917, R. S. Mo. 1929, and to

April 3, 1940

certify to the two School Districts which include the territory formerly embraced in the original school district, the amount required to pay all sums in arrears, both principal and interest, and in the event that taxes are not duly levied and collected to pay such amount, that this office levy a special tax on all of the property situated in the original school district for the purpose of paying the principal and interest in arrears.

"The foregoing procedure was sustained by the Supreme Court in the case of State ex rel. Henry v. State Auditor and Forrest Smith as such State Auditor, 342 Mo. 797, 118 S. W. (2d) 19. The statute under consideration in said case was Section 8182, R. S. Mo. 1929, applicable to certain special road districts.

"Section 2917, R. S. Mo. 1929, contains provisions very similar to those contained in Section 8182, considered by the Supreme Court in the foregoing case, and I desire to know whether or not, in your opinion, I have the power and duty to proceed with the levy of taxes as aforesaid:"

Discussing for the moment the question of the B School District, which you have designated as the district whose students are white, and the K School District whose students are colored, and the agreement between the two school districts, we think that question involved is purely collateral and has no bearing on any ultimate duty which you have to or have not to perform.

We assume that the original bond issue encumbered the entire district before it was divided. The two districts were probably under the provisions of Section 9275,

R. S. Mo. 1929. Section 9278, R. S. Mo. 1929, provides for the distribution of the property and Section 9279, R. S. Mo. 1929, provides for the valuation of the property to be divided when the districts cannot agree upon a settlement. Regardless of the division of the indebtedness between the two districts, which you state to be of ratio of 40 and 60, the terms of the bond will determine and in all probability make either or both districts liable for the entire amount. However, the agreement between the two districts can be enforced as between themselves.

We have considered the statutes and the decision which is contained in your letter. It will be necessary to set forth the statutes involved in order that we may determine whether the decision is applicable.

Section 8182, R. S. Mo. 1929, which refers to "special road districts" in certain counties, is as follows:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working, repairing and dragging roads in the district, general taxes on property taxable in the district, and shall also have power and authority and be its duty to levy special taxes for the purpose of paying the interest on bonds when it falls due and to create a sinking fund sufficient to pay the principal of such bonds at maturity; and, whenever such commissioners shall, at any time between the first day of January and the first day of March of any year, file with the clerk of the county court a written statement that they have levied such tax, and stating the amount of the levy for each hundred dollars assessed valuation, the county clerk,

in making out the tax books for such year shall charge all property taxable in such district with such tax, and such tax shall be collected as county taxes are collected. Whenever it shall be made to appear to the state auditor that the board of commissioners has failed or neglected to comply with this section in making provision for the payment of interest on and the principal of bonds issued it shall be the duty of the state auditor, on or before the first day of May, to perform and discharge the duties of the board of commissioners in so far as it is its duty to levy special taxes for the purpose of paying the interest on and the principal of bonds issued."

In the decision of State ex rel. Henry v. State Auditor, 342 Mo. 797, said decision pertaining to a mandamus action against you as State Auditor, the court held in substance that the part of Section 8182 requiring the State Auditor when the board of commissioners of a road district has not complied with the provisions of the statute for levying taxes to pay interest on bonds issued, to perform such duties, is directory, and that six months delay would not prevent the power to levy the tax. The element of time was your main defense and the court overruled your contention and awarded the peremptory writ compelling you to make the levy.

Section 2917, R. S. Mo. 1929, is as follows:

"The state auditor shall, annually, on or about the first day of July, certify to the several county courts, city councils, boards of aldermen, boards of trustees, school boards, boards of supervisors or boards of commissioners, the amount required

during the next fiscal year to pay maturing interest coupons, together with ordinary costs to the state of collection and disbursement of the same, which amount shall thereupon be levied as a special tax upon all property in such county, city, village, township, school district, special or common road district, drainage district or levee district, and shall be collected with the state revenue and paid over to the treasurer of the county, city, village, township, school district, drainage district or levee district, special or common road district, having issued such outstanding registered bonds, which shall be deposited by such treasurer to the credit of his respective county, city, village, township, school district, drainage district, special or common road district, or levee district, in the bank or banks at which the same are made payable; provided, that this special tax may be paid in coupons, registered under this article, overdue or maturing during the current fiscal year."

We have compared the two sections and detect very little similarity. Under Section 8182 the express provision is that, "Whenever it shall be made to appear to the state auditor that the board of commissioners has failed or neglected to comply with this section in making provision for the payment of interest on and the principal of bonds issued it shall be the duty of the state auditor, on or before the first day of May, to perform and discharge the duties of the board of commissioners in so far as it is its duty to levy special taxes for the purpose of paying the interest on and the principal of bonds issued." Thus, as was held in the case of State ex rel. Henry v. Smith, State Auditor, supra, there

April 3, 1940

is placed upon you a mandatory duty if the board of commissioners of a district does not perform its duty within the required time. Section 2917 imposes no mandatory duty upon you in so far as imposing a levy for the collection of principal and sinking fund on bonds. It does require you on or about the first day of July to certify to the school boards in question "the amount required during the next fiscal year to pay maturing interest coupons, together with ordinary costs to the state of collection and disbursement of the same." We interpret the next portion of the section, namely, "which amount shall thereupon be levied as a special tax upon all property in such county, city, village, township, school district * * * and shall be collected with the state revenue and paid over to the treasurer of the county, city, village, township, school district * * * having issued such outstanding registered bonds, which shall be deposited by such treasurer to the credit of his respective county, city, village, township, school district * * *" to be a duty imposed upon the school board.

As we interpret the statute, and we think it is plain and unambiguous, you must carry out your duty as contained in the first provisions of the statute, but the burden of levying the special tax upon the property and the collection of the tax falls upon the school districts, and if you have certified the amount required during the next fiscal year to pay the interest coupons then you have discharged your full duty under the statute and any contemplated mandamus action should be brought against the school districts and not you as State Auditor. We accordingly so hold.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

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