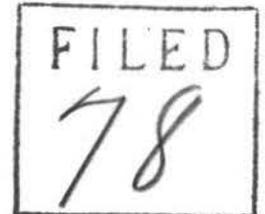


SCHOOLS : Construing House Bill No. 494, which will  
: become new Section 10454. The maximum  
: constitutional levy for consolidated  
: school districts not containing an in-  
: corporated town or village within boundaries  
: is sixty-five cents on the hundred dollar  
: valuation. Additional apportionment and as  
: provided for in this section is to be made  
: on attendance of pupils belonging to the  
: district.

November 17, 1943

Honorable Roy Scantlin  
State Superintendent of Schools  
Jefferson City, Missouri



Dear Sir:

This office is in receipt of your letter of October, 30, 1943, which, omitting caption and signature, reads as follows:

"This Department is confronted with the problem of the apportionment of state school moneys to school districts in this state as provided in House Bill 494 enacted by the 62nd General Assembly, 1943. Provision is made in this law for what is known as an additional apportionment after all basic or first level apportionments have been paid in full. The two following requirements providing for the calculation of the additional apportionments require interpretation.

"1. Each and every school district in the state which has levied a tax of the maximum constitutional limit shall receive the additional apportionment. Provided, further, that any school district levying less than the constitutional limit for teachers' wages and incidentals shall receive a pro rata part of the maximum apportionment.

"2. An additional attendance apportionment of one and six-tenths (1.6) cents per day per pupil day based on total days attendance of preceding year shall be made.

"In relation to the first part providing for an additional apportionment to districts levying

the constitutional maximum, it is not clear what constitutes the maximum constitutional levy for school purposes (teachers and incidentals) for certain consolidated school districts, particularly these consolidated districts where no incorporated town or village is located. Section 11, Article X, of the constitution fixes the maximum tax rates for school purposes as follows: (1) Districts formed of cities and towns may not exceed \$1.00; (2) in other districts, an amount not to exceed 65¢. Several consolidated school districts in this state do not have located with the district an incorporated town or village. Section 10323, R. S. 1939, in classifying school districts provides in part that all districts outside of incorporated cities, towns and villages which are governed by six directors shall be known as consolidated districts. Section 10493, R. S. 1939, which provides for the organization of consolidated districts places the organization in control of such districts under the laws governing town and city school districts. Section 10494, R. S. 1939, permits consolidated districts to include towns or villages which do not have an enumeration of more than 500 children.

"In relation to part 2 providing for additional apportionments to districts based on days' attendance, it is not clear what constitutes a school district's attendance as a basis for calculating the additional apportionment of one and six-tenths (1.6) cents per day. It is commonly thought that a school district's attendance has reference only to those pupils who are residents of the district. However, in many districts in this state, the board of education admits non-resident elementary and high school pupils as provided in Section 10340, R. S. 1939. The board of education by admitting non-resident pupils has the power to require the tuition to be

paid for the attendance of such non-resident pupils. Boards of education in admitting non-resident pupils look to the payment of tuition as the only source of income in meeting the cost of providing such educational facilities.

"Laws of this state in some cases are specific in requiring the attendance on non-resident pupils to be counted back to the pupil's home district as the basis for future state school apportionments to such districts. Other laws, by their very nature, would indicate that the attendance of non-resident pupils in reality belongs to the home or sending district. I refer you to the following laws.

"Section 10456, R. S. 1939, provides that a school district's teaching unit apportionment shall be determined on the basis of the attendance of the preceding year. In general, the laws indicate that the basis for any apportionment to a school district is the attendance of the pupils resident of a district whether or not they attended school within the district or were sent to some other school outside the district. The laws of this state make the school district responsible for providing educational facilities for its pupils.

"Section 10461, R. S. 1939, which authorizes the assignment of pupils from their home district to attend school in an adjoining district, provides specifically that the attendance of such assigned pupils shall be credited to the home or sending district for purposes of making the state school fund apportionment.

"Section 10457, R. S. 1939, which authorizes the temporary combination of school districts provides specifically that the attendance shall be counted back to the home district.

"Section 10465, R. S. 1939, which authorizes

the state superintendent of schools to require districts with less than fifteen average daily attendance to close and send their pupils to some other school outside the district, provides for the apportionment of state school moneys and implies that such districts have established attendance even though the board of directors sent the pupils to some other school outside the district.

"Section 10453, R. S. 1939, authorizes the board of directors of common school districts or others in which high schools are not maintained to pay the high school tuition for their resident pupils who attend high school outside the district. This section further provides that the attendance of such high school pupils shall not be counted by the receiving district in determining teaching units. The teaching unit apportionment as defined in Section 10454 refers only to the attendance of pupils living in the school district providing the high school. This would indicate that the attendance of high school pupils being sent by the rural district to some high school is in reality attendance belonging to the pupil's home district. The Supreme Court, in the case of Burnett vs. Jefferson City School District, 335 Mo. 803, 74 S. W. (2d) 30, pointed out that the \$50.00 high school tuition paid by the state to the receiving district is in reality state aid to the sending or rural district.

" I shall appreciate your advice and official opinion in answer to the following question:

"1. Is 65¢ on the \$100.00 valuation the maximum constitutional tax levy for consolidated districts that do not contain a town or village within the district boundaries?

"2. Is the school district's attendance, to

which is referred in House Bill 494 as a basis for calculating the additional attendance apportionment of one and six-tenths (1.6) cents, only the attendance of the pupils belonging to said district?"

House Bill, No. 494, as enacted by the Sixty-second General Assembly, approved by the Governor, Aug. 5, 1943, reads as follows:

"Section 1. That Section 10454, Article 4, Chapter 72, Revised Statutes of Missouri, 1939, as amended by an act appearing in Laws 1941 at page 550, be and the same is hereby repealed and a new section enacted in lieu thereof to be known as Section 10454 and to read as follows:

"Section 10454. The board of directors of each and every school district in this state is hereby empowered and required to maintain the public school or schools of such district for a period of at least eight months in each school year. In order that each and every district may have the funds necessary to enable the board of directors to maintain the school or schools thereof for such minimum term and to comply with the other requirements of this act, it is hereby provided that when any district has legally levied for school purposes (teacher's wages and incidental expenses) a tax of not less than twenty cents on each one hundred dollars of the assessed valuation of property therein, such district shall be allotted out of the public school fund of the state an equalization quota to be determined by adding seven hundred and fifty dollars for each elementary teaching unit to which the district is entitled according to the provisions of section 10456 of this law, one thousand dollars for each high school teaching unit to which the district is entitled according to the provision of section 10456 of this law, and the amount approved for resident transportation and then subtracting from the total, which total shall be known as the minimum guarantee of such district, the sum of the following items:

The computed yield of a tax of twenty cents on each one hundred dollars (\$100) of the assessed valuation of the property of the district, the sum received the preceding year from the county and township school funds, and the sum estimated to be received for the current year from the railroad, telegraph, utility and all other taxes based on assessments distributed by the state board of equalization. The state superintendent of schools is hereby empowered, and it shall be his duty, on or before the 15th day of August, 1943, and on or before the 15th day of August of each year thereafter, to apportion the public school fund of the state as follows: He shall calculate an equalization quota, as hereinbefore defined, for each and every district entitled to such quota. For each and every district not entitled to an equalization quota he shall calculate a teacher quota in accordance with the basis provided in section 10390, Revised Statutes 1939, and an attendance quota in accordance with the basis provided in section 10390, Revised Statutes 1939, at the rate of one and three-tenths (1.3) cents a day. He shall apportion to each and every district for which an equalization quota was calculated the amount as hereinbefore provided, and he shall apportion to each and every district not receiving an equalization quota the teacher and attendance quotas as above provided. On or before the 15th day of December, 1943, and on or before the 15th day of December of each year thereafter, he shall determine the amount of the public school fund in the state treasury as of the last day of the preceding November, and from this amount he shall apportion to each and every district for which an equalization quota was calculated at the time of the apportionment made on or before the 15th day of August last preceding, the remainder of such quota, if any remainder there be. He shall also apportion to each and every district for which teacher and attendance quotas were calculated at the time of the apportionment made on or before the 15th day of August last preceding the remainder of such quotas, if any remainder there be, or such part of such remainder as the funds available for apportionment will permit; and on or before

the 15th day of March, 1944, and on or before the 15th day of March of each year thereafter, he shall determine the amount of the public school fund in the state treasury as of the last day of the preceding February, and from this amount he shall apportion to each and every district for which an equalization quota was calculated at the time of the apportionment made on or before the 15th day of August, last preceding, the remainder of such quota, if any remainder there be. He shall also apportion to each and every district for which teacher and attendance quotas were calculated at the time of the apportionment made on or before the 15th day of August last preceding the remainder of such quotas, if any remainder there be, or such part of such remainder as the funds available for apportionment will permit: Provided, that special state aid shall continue to be apportioned as now or hereafter provided by sections 10353, 10356 and or 10583, Revised Statutes, 1939: Provided further, that the state superintendent of schools shall at the time of making the annual apportionment, apportion to the various districts their allotments of building, transportation and /or tuition aid as provided by law; Provided, however, in the event there should be insufficient funds to carry out the minimum guarantee of seven hundred fifty dollars (\$750.00) for each elementary teaching unit and one thousand dollars (\$1,000.00) for each high school teaching unit, and the teacher quota and the attendance quota of one and three-tenths (1.3) cents for such districts as do not participate in the minimum guarantee, all school funds to be apportioned by virtue of the provisions of this act shall be apportioned to all districts in pro rata proportion, paying such percentage of each and every one of these apportionments as the money available in the public school fund will permit; Provided further, that after all apportionments hereinbefore provided have been paid in full, the state superintendent of schools shall make an additional apportionment

to each and every district in the state which has levied a tax of the maximum constitutional limit for school purposes (teacher's wages and incidental) and to which an equalization quota or teacher and attendance quota apportionments have been made on or before the 15th day of August, last preceding, of two hundred dollars (\$200) for each elementary teaching unit in which a teacher having a state certificate is employed; one hundred twenty-five dollars (\$125) for each such unit in which a teacher having a first grade certificate is employed; one hundred dollars (\$100) for each such unit in which a teacher having a second grade certificate is employed; fifty dollars (\$50) for each such unit in which a teacher having a third grade certificate is employed and three hundred dollars (\$300) per high school teaching unit; and an additional attendance apportionment of one and six-tenths (1.6) cents per pupil day based on total days attendance of preceding year to each and every such district to which teacher and attendance quotas or equalization quota apportionments have been made. Provided further, that any school district levying less than their constitutional limit for school purposes (teachers wages and incidentals) shall receive that percent of such additional apportionment as the tax rate levied in said district is of said constitutional limit for said purposes. In the event the amount of money in the public school fund is not sufficient to pay these quotas in full the state superintendent of schools shall pay such percentage of both the teaching unit and the attendance quotas as the amount in the public school fund will permit; Provided, further, that after all apportionments hereinbefore provided have been paid in full the state superintendent of schools shall apportion any excess remaining in the school fund equally among all of the districts of the state in proportion to the number of teaching units in each district as reported to the state superintendent for the preceding year: Pro-

vided that until such time as the above mentioned additional apportionments are paid in full, any consolidated district now in existence and operating under the provisions of section 10500, Revised Statutes 1939, may elect to receive state aid under the provisions of this law or under the provisions of said section 10500; but if said consolidated districts elects to receive aid under the provisions of said section 10500, said district shall thereby waive all claim to priority of payment as provided in said section. "

That portion requiring construction has been underscored and we now proceed with the questions raised in your request.

1. Is 65¢ on the \$100.00 valuation the maximum constitutional tax levy for consolidated districts that do not contain a town or village within the district boundaries?

Directing attention to that portion of the Missouri Constitution which concerns Revenue and Taxation, namely, Article X, we find that at section 11, and that portion devoted to the limits for local school purposes, a division of schools when the question of the annual rates for school purposes is raised.

1. In districts formed of cities and towns, for school purposes the levy may be increased to an amount not to exceed \$1.00 on the \$100.00.

2. In other districts, for school purposes an amount not to exceed 65¢ per \$100.00 may be levied.

After providing rates for local purposes, prescribing limits, etc., the Constitution, Article X, Sec. 11, reads as follows:

" For school purposes in districts composed of cities which have 100,000 inhabitants or more, the annual rate on property shall not exceed 60¢ on the \$100.00 valuation and in other districts, 40¢ on the \$100.00 valuation. Provided, the aforesaid annual rates for school purposes may be increased in districts formed of cities and towns, to an amount not to exceed \$1.00 on the \$100.00 valuation, and in other districts to an amount not to exceed 65¢ on the \$100.00 valuation, on the condition that a majority of the voters who are taxpayers, voting at an election held to decide the question, vote for said increases." (Underscoring ours.)

Our courts have, in numerous cases, defined what was a "city or town district" and "other district" where the question of the constitutional limitation on taxation for school purposes. We find

In State ex rel, Brown v. Woods, 61 S. W. 2d, 732, 332 Mo. 1123 :

"\* \* \* First, all districts having only three directors shall be known as common school districts; second, all districts outside of incorporated cities, towns and villages, which are governed by six directors, shall be known as consolidated school districts; third, all districts governed by six directors and in which is located any city of the fourth class, or any incorporated town or village, shall be known as town school districts, and fourth, all districts in which is located any city of the first, second or third class shall be known as city school districts." Section 11123, R. S. Mo. 1919 (Section 9194, R. S. Mo. 1929 ( Mo. St. Ann. Sec. 9194). \*\*\*"

"\*\*\* Thus, it appears that by organization under sections 11257, 11258, 11259, R. S. 1919, and by classification under section 11123, R. S. 1919, which was in force at the time of the consolidation, the Patterson consolidated district is not a city or town district. It is one of the "other districts" as that term is used in Section 11, article 10, of the Constitution. It follows that the rate of taxation for school purposes in said districts cannot exceed 65 cents on the \$100 valuation of the property in the district.\*\*\*"

The attitude of our courts with respect to a levy made for building purposes and actually required for operating revenues is responsible for this observation in an opinion by Hays, Judge, in

Russell v. Frank, 154 S. W. 2d, l. c. 67,  
348 Mo. 533

"\* \* \* We can only repeat in this connection what we said in the Marlowe case, 58 S. W. 2d, loc. cit. 754: 'This may be a laudable purpose from one standpoint, but from a legal standpoint it constitutes legal fraud. While this court will allow school boards large latitude and discretion in providing and expending school revenues, even to the extent of anticipating the future needs and possible deficiencies in the means provided, yet the rights of the taxpayers must be guarded and the taxes imposed kept within the constitutional limits. \* \* \*'"

See State ex rel. and to Use of Buck, Revenue Collector, v. St. Louis & S. F. Ry. Co., 174, S. W. 64.

"Const. art. 10, Sec. 11. as amended in 1902, (Laws 1901, p. 266) provides that for school purposes the annual rate in districts 'formed' of cities and towns may not exceed \$1, and in other districts not exceed 65 cents on a \$100 valuation. Rev. St. 1909, Sec. 10775, classifies school districts and declares a district governed by six directors and in which is located any city of the fourth class or any incorporated town or village to be a town school district. Section 10825 empowers the county clerk to levy upon all property in a town school district not to exceed one per cent, for school purposes, and section 10864 provides that any organized town or city school district shall include only the territory in the corporate limits of the city, town or village organizing as a school district, and such outside territory as may, by the creation of the new district, be cut off from the district to which it formerly belonged. Held, that the verb 'form'

meant to go to make up, to be an element or essential constituent of; said of that out of which anything is formed or constituted in whole or in part; that the term 'formed of cities and towns' did not require that the limits of such city or town school district be coterminous with the limits of the incorporated town or city; that the provision for attaching outlying contiguous territory was constitutional; and that a town district organized with contiguous outside territory might levy taxes not exceeding \$1 on the \$100 valuation. \* \* \*

From what has been read thus far, we conclude that a consolidated school district outside of an incorporated town is the "other district" as set out in Art. X Sec. 11, Mo. Cons. As such "other district" the constitutional tax levy limit is 65¢ per \$100 valuation.

The question now comes as to the intention of the Legislature with respect to this additional apportionment when the limit in one class of schools is \$1.00 per \$100 and in the other 65¢ per \$100.00?

We believe from our study that the important idea our lawmakers had in mind was to require the maximum levy in each district possible under the constitution. Having clearly made a positive definition of the different classes of districts, the Legislature, insisted only on maximum constitutional levies as a basis for this additional apportionment. The basis of this conclusion is predicated on the following:

That portion of the new section, 10454, R. S. Mo., 1939, useful for our purpose reads:

"Provided further, that after all apportionments hereinbefore provided have been paid in full, the state superintendent shall make an additional apportionment to each and every district in the state which has levied a tax of the maximum constitutional limit for school purposes. \* \* \*"

In construing the language used above, the words used are not technical, their meaning is clear

and unambiguous. They are to be understood in their usual and ordinary sense. Numerous decisions support this theory and we cite

State ex rel, Buck v. Railway, 174 S.W. 64, Par. 2, in this instance.

It is unnecessary to define the word "maximum" and we further point out the fact that the superintendent shall make the additional apportionment to each district which has qualified by levying the maximum constitutional limit for school purposes. This is a mandatory duty imposed and nothing is left to the discretion of the superintendent, if and when, the statutory requirements have been met by the district.

Obviously, the maximum constitutional limit in the case of "other district" is 65¢ per \$100.00 valuation and for the first two classes of districts the limit is \$1.00 per \$100.00 valuation, and we hold that the superintendent shall make the additional apportionment on that basis.

The second paragraph of your request reads:

"2. Is the school district's attendance, to which is referred in House Bill No. 494, as a basis for calculating the additional attendance apportionment of 1.6 cents, only the attendance of the pupils belonging to the said district?"

Before arriving at a conclusion it would seem advisable to examine the statutes and decisions relating to the basis used in the determination of school apportionments.

Referring to House Bill No. 494, where the matter of attendance quota apportionments is announced, we find:

"\* \* \* and an additional attendance apportionment of 1.6 cents per pupil day based on total days attendance of preceding year, to each and every such district to which teacher and attendance quotas or equalization quota apportionments have been made."

We call to your attention sections 10457, 10458, 10461, 10456, 10464, R. S. Missouri, 1939.

We do not propose to quote these sections, because of their extreme length, instead we shall digest those portions and point out the provisions involving the methods employed in charging non-resident pupils to home or receiving districts.

Section 10457, R. S. Mo., 1939, provides for temporary combination of school districts and further states "that in such temporary combinations the record of daily attendance of pupils of each district shall be kept separate, and credited to their respective districts, as a basis for future apportionments.

Section 10458, R. S. Missouri, 1939, in authorizing a board to pay transportation and tuition costs, provides that the receiving district shall not count the non-resident pupils in determining teaching units, and the attendance of high school pupils is in effect to be credited to the home or sending district.

There are numerous decisions in our courts which sustain the theory that tuition payments in the case of non-resident pupils is state aid offered to the sending district, and as such is credited to the pupils' home district. These decisions point out that payment of the fund in such situations is made to the receiving district, yet that procedure is a matter of book keeping and proper credit is given sending district.  
See

Herculaneum v. Pevely District, 139 S. W. 2d, 1106  
St. Charles Co. v. West Alton Dist. 162 S.W. 2d, 305  
159 S.W. 2d, 676

Board of Education of St. Louis v.  
St. Louis County, 149 S. W. 2d, 878  
347 Mo. 1014

Burnett v. Jefferson City District, 74 S. W. 2d, 30  
335 Mo. 803

Section 10461, R. S. Missouri, 1939, in making provision for assignment of pupils to the most accessible school, makes this statement. " \*\*\* the attendance of such assigned pupil shall be credited for the purpose of apportionment of state funds to the district in which the student lives, and the Board of Directors of the district in which said student lives shall pay the tuition of such pupil or pupils so assigned."

Section 10456 R. S. Missouri, 1939 in setting out and defining a teaching unit, specifies that unit apportionment is to be based on attendance of the preceding year. A further provision indicates that the basis of apportionment is the attendance of pupils resident, and this, regardless of the fact that some may have been sent to other districts.

Section 10464, R. S. Missouri, 1939. In the low attendance districts, authority to close the school and transport is given the State Superintendent of Schools. Tuition and Transportation fees are still the responsibility of the board of the closed school. The natural inference is, that the District has an established attendance and is so charged with the responsibilities of the district, despite the fact it has been, for practical purposes, closed.

In each of the above apportionment situations, whether it involves tuition, transportation, a teaching unit, closing of a school, or a temporary combination of schools, the fundamental idea prevails that pupils of the home or sending district do not lose their identity even though they attend schools outside their district.

Numerous practical matters have had to be taken into consideration in reaching these expressions of intent by the Legislature. Any other method would lead to duplication, confusion and disorder. This would eventually require pupils to rigidly adhere to the home district in every instance.

They may take up residence in other districts, and as such become members of the new district. The annual enumeration will take care of that situation.

Honorable Roy Scantlin

-16- November 17, 1943

We conclude, therefore, that the Legislature had this in mind when the new section, 10454, R. S. 1939, was put on the statute books.

C O N C L U S I O N .

From all of the above, we therefore, give as the opinion of this office:

1. That a levy of 65¢ on the \$100.00 valuation is the maximum constitutional tax levy for consolidated school districts which do not contain a town or village within the district boundaries.

It is our further opinion that the Legislature intended the school apportionment to be made on the basis that those districts levying their constitutional maximum would become eligible for the apportionment allowed under the terms and conditions as provided for in House Bill No. 494, and which will subsequently become new section 10454.

2. That as a basis for calculating the additional apportionment of 1.6 cents, as provided for in new section 10454, only the attendance of the pupils belonging to the district will be considered.

All of which is respectfully submitted,

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L. I. MORRIS  
Assistant Attorney General

APPROVED:

\_\_\_\_\_  
ROY MCKITTRICK  
Attorney General of Missouri

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