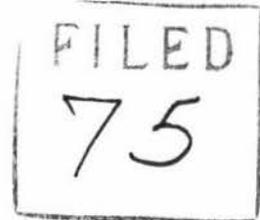


TAXATION: In computing the average rate of taxation to be  
RAILROADS: levied against railroads and utilities for  
SCHOOLS: school purposes, the local rates of all school  
districts in the county, including those not  
wholly within the county, should be added to-  
gether and divided by the total number of  
school districts in the county, including those  
districts not wholly within the county.

October 5, 1949



Hon. John M. Rice  
Prosecuting Attorney  
Newton County  
Neosho, Missouri

Dear Sir:

We have your recent request for an opinion, which reads  
as follows:

"I would appreciate an opinion from your  
office on the following matter:

"Section 11280.17, Revised Statutes of  
Missouri, 1939, sets out the manner of  
levying taxes for school purposes against  
railroad companies and Section 11295 pro-  
vides for taxation of other utilities in  
the same manner as provided for taxation  
of railroad property. Section 11280.17  
provides, in part, that:

"The several County Courts shall ascer-  
tain from the returns in the office of  
the County Clerk the average rate of  
taxation levied for school purposes \* \*  
by the several local school boards or  
authorities of the several school dis-  
tricts throughout the County. Such  
average rate for school purposes shall  
be ascertained by adding together the  
local rates of the several school dis-  
tricts in the County and by dividing the  
sum thus obtained by the whole number  
of districts levying a tax for school  
purposes \* \* \*"

"In this County there are five school  
districts which overlap into another  
County, in other words, we have 73 dis-  
tricts but only 68 of them are entirely

in Newton County. In each of the five overlapping districts the school building itself is in another County, but a substantial part of the district is in Newton County.

"In computing the average rate of taxation to be levied against railroads and utilities, is the proper procedure to add together the local rates of the 73 school districts and divide the sum thus obtained by 73, or to add together the local rates of the 68 school districts wholly within Newton County and divide the sum thus obtained by 68?"

The statutes relating to this problem are:

(1) Section 11295, Laws of Missouri, 1945, page 1853, which provides that all property belonging to bridge, telegraph, telephone, electric power and light, electric transmission, pipe line and express companies shall be assessed in the same manner as is provided for the property of railroad companies;

(2) Section 11280.17, page 1831, id., which provides for the assessment of railroad property for all purposes, except schools and public building;

(3) Section 11280.18, page 1832, id., which provides for the assessment of railroad property for the levying of school taxes, here set out, in part, as follows:

"For the purpose of levying school taxes, and taxes for the erection of public buildings, and for other purposes, in the several counties of this state, on the roadbed, rolling stock and movable property of railroads in this state, the several county courts shall ascertain from the returns in the office of the county clerk the average rate of taxation levied for school purposes, and also the average rate of taxation levied for the erection of public buildings, and for other purposes, each separately, by the several local school boards or authorities of the several school districts throughout the county. 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, \* \* \*

This statute first became law in 1875, and is found in almost identical wording in the Revised Statutes of 1879, 1889, 1899, 1909, 1919, 1929 and 1939. Cases footnoted under the various acts show that the particular problem you raise, i.e., the question of overlapping school districts, has never been adjudicated. The method of computation (adding together the local rates of the school districts in the county and dividing by the total number of school districts) has remained totally unchanged throughout all the various re-enactments. In 1945 this statute was repealed, but the new act again contains the same wording as all the preceding ones. The method of rate computation is precisely the same. Thus, Section 11280.17, as relates to the problem of overlapping school districts, has never been discussed by the courts of this state.

Your question then will have to be answered in two ways, (1) by ascertaining the meaning of the wording of the section itself and (2) by cases approaching, but not on, the exact point.

The most important word in the section is the word "in," as used in "the local rates of the several school districts in the county." The word "in" is synonymous with the word "within." Mackay v. Commonwealth Casualty Co., 224 Mo. App. 1100. "The word 'in' within the bounds of." Board of Freeholders v. Central R. R. Co., 68 N. J. Eq. 500. "The words 'within any county or precinct' must be construed to mean and include not only the entire county or precinct but any definite or prescribed portion thereof." Paul v. State, 48 Tex. Civ. App. 25. "Within said county refers to business originating or terminating in or passing through the offices in said county and cannot be construed to refer to business wholly between points within the county." State v. Western Union Tele. Co., 42 Mont. 445. "The phrase 'within the county' includes roads which may be partly within any of the municipalities of the county." White v. County Court of Mercer Co., 76 W. Va. 727. "The use of the words 'within this state' cannot by any fair construction be held to limit transportation of freight wholly within the state." People v. Wabash R.R. Co., 104 Ill. 476.

It seems, then, that the most reasonable construction of the meaning of the word "in" or the word "within" in any geographical or political area is that it means partially in or not wholly within the area. Had the Legislature intended that the counties should exclude, for the purposes of average tax rate calculation, any school district which was partially in another county, it could have simply inserted the word "wholly" before the word "in." The absence of this limiting adjective strongly indicates that no such limitation was intended by those who wrote the law.

Thus, as far as the actual wording of the statute is concerned, it appears that, for purposes of making the railroad tax calculation, the tax rates of all the school districts in the county, plus those only partially or not wholly within the county, should be averaged in.

There is only one case which throws some light on the particular question before use. In State ex rel. Brown v. Mo. Pac. R. R. Co., 92 Mo. 154, the court sets out the statute in full and discusses it as follows:

" \* \* \* It is certainly within the power of the legislature to authorize the imposition of taxes for school purposes on the property of defendant, and considering the nature of its property, and the fact \* \* \* that its aggregate value is made up because of its continuity, that the portion of a railroad \* \* \* would be of little or no value, considering these things in connection with the further fact that the rolling stock of defendant \* \* \* cannot be localized in any one county, it being, from its very nature, constantly changing from one county to another \* \* \*" (Underscoring ours.)

This case, one of the first to discuss the section, thus indicates that the school districts, rather than the county lines were to be of paramount determinative force in arriving at tax rates.

#### CONCLUSION

It is the opinion of this office that in computing the average rate of taxation to be levied against railroads and

utilities that the proper procedure is to add together the local rates of all the school districts in the county, including those districts only partially or not wholly within the county, and to divide by the whole number of such districts, including those not wholly within the county. Thus, in a county having sixty-eight school districts wholly within the county and five partially within the county, the proper procedure is to add together the local rates of all seventy-three school districts and divide the sum thus obtained by seventy-three.

Respectfully submitted,

H. JACKSON DANIEL  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General