

SALES TAX: It is not necessary for public schools supported
TAXATION: solely by public funds to charge a sales tax to
persons purchasing tickets of admission to school
sponsored athletic events, plays and entertainments.

September 10, 1951

9-10-51



Mr. W. H. Pinnell
Prosecuting Attorney
Berry County
Cassville, Missouri

Dear Sir:

This department is in receipt of your recent request
for an official opinion. You thus state your opinion request:

"I have been requested by a school system
within this County to request your opinion,

"as to whether or not it is necessary
for schools to charge state sales tax to
patrons attending athletic contests,
school plays, or any other form of enter-
tainment in which an admission is charged."

We assume from your letter that the schools to which you
refer are public schools supported and maintained solely by
public funds.

Section 144.040, RSMo 1949, states:

"In addition to the exemptions under sec-
tion 144.030 there shall also be exempted
from the provisions of this chapter all
sales made by or to religious, charitable,
eleemosynary institutions, penal institu-
tions and industries operated by the
department of penal institutions or edu-
cational institutions supported by public
funds or by religious organizations, in the
conduct of the regular religious, charitable,
eleemosynary, penal or educational functions
and activities, and all sales made by or to a
state relief agency in the exercise of relief
functions and activities."

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You will note that the above section exempts from the operation of the sales tax law "educational institutions supported by public funds or by religious organizations ... in the conduct of the regular ... educational functions and activities ..."

From the above it would clearly appear that public schools supported by public funds are not subject to the sales tax law in the conduct of their educational functions and activities.

It would appear that the only question which we now have to answer is whether school sponsored athletic events, school plays and entertainments, are "educational functions and activities."

In considering this matter we would first call attention to the policy of our courts to liberally construe exemption statutes in favor of educational institutions. In the case of *State ex rel. v. Trustees of William Jewell College*, 234 Mo. 299, the court said, l.c. 308:

"It is urged that exemption statutes are to be strictly construed. Generally speaking, such is the rule. But we take it from the cases that there has been a well recognized exception to the rule. Perhaps a better wording would be to say that the courts have never been over anxious to apply the rule so as to impose burdens upon religious, scientific, literary and educational institutions. Strict construction has largely been applied to corporations organized for profit and gain, not to corporations performing a public service.
* * *"

In the case of *Alexander v. Phillips*, 254 Pac. 1056, the question before the court was whether a school district could issue bonds for the building of a stadium in which athletic events and contests would be held. The court held that the school district could do this; that athletic contests were properly part of the educational program. In summation, the court said, l.c. 1059:

"For the foregoing reasons, we are of the opinion (1) that physical education is one of the branches of knowledge legally imparted in the Phoenix union

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high school; (2) that competitive athletic games and sports in both intra and inter mural games are legal and laudable methods of imparting such knowledge; and (3) that a structure whose chief purpose is to provide for the better giving of such competitive athletic games and sports as aforesaid is reasonably a schoolhouse within the true spirit and meaning of paragraph 2736, supra."

In the case of Woodson et al. v. School District No. 28, Kingman County, et al. 274 Pac 728, the court had before it the question whether a common school district could erect and issue bonds in payment for a building to be used in part for classrooms, and in part for athletics and the teaching of dramatics. In its opinion the court said, l.c. 730:

"* * * But, even if the record disclosed that the sole purpose of the building was for the teaching of dramatics and athletics, we should be slow to hold that defendants would have no authority to proceed. We have been cited to no authority holding, and we would be reluctant ourselves to hold, that the study of dramatic expression, or that physical training, were not educational subjects. It is a matter of common knowledge, of which this court may take judicial notice, that such subjects are taught in practically all the high schools, colleges, and universities in this state."

In the case of Dodge v. Jefferson County Board of Education, 181 S.W. 2d 406, the question before the court was the propriety of an expenditure of tax funds collected for educational purposes, for maintenance of a recreational plan for children of school age. The court held that such an expenditure was embraced in the term "education."

In the case of Wysong v. Walden, 52 S.E. 2d 392, the court stated, l.c. 398:

"Specification No. 5 is to the effect that respondents, as a majority of the board, authorized the payment, among others, of a bill of Starr Sporting Goods Company,

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of Huntington, West Virginia, in the sum of \$294.00, and that an order for that amount, marked 'for athletic equipment', was subsequently issued to said company. The demurrer to this specification was properly sustained. Education is a broad term. It embraces the development of both mind and body. The purchase of athletic equipment to be used by the pupil in the schools of Lincoln County certainly is not, ipso facto, an abuse of discretion. A fortiori it is not necessarily a ground for removal of the officers making the contract."

Finally, we direct attention to the case of Bohemian Gymnastic Ass'n Sokol of City of New York v. Higgins, 147 F. 2d, 774, a decision by the United States Circuit Court of Appeals, Second Circuit. The court stated the issue as follows, i.c. 774:

"This is an appeal by the Collector of Internal Revenue from a judgment in favor of the plaintiff rendered after a trial before Judge Conger without a jury. He held that the plaintiff, Bohemian Gymnastic, was a corporation organized exclusively for educational purposes, no part of the net earnings of which accrued to the benefit of any shareholder or individual, hence was not liable to pay Social Security taxes with respect to the wages paid to its employees and was entitled to a refund of \$47.87 of those taxes which it had paid. In our opinion the decision was right and should be affirmed."

The court held that where educational programs of corporation consisted of gymnastic and athletic classes, contests, games and summer camping projects, musical and dramatic classes, recitals, folk and classical dancing, and art exhibits, and such program was supplemented by regular classroom lectures in first aid, hygiene, citizenship, civics, literary work, and national defense, such activities could properly be regarded as "educational" within exemption from social security taxes with respect to wages paid to employees.

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From the above cases it would appear that school sponsored athletic events, school plays and entertainments, are "educational functions and activities," and are therefore exempt from the operation of the sales tax law to the extent that the sales tax need not be added on to the price of admission to such functions and activities.

This department has so held in an opinion rendered January 21, 1948, to Honorable L. Madison Bywaters, Prosecuting Attorney at Clay County, a copy of which opinion is attached.

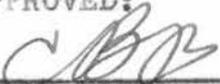
CONCLUSION.

It is the opinion of this department that it is not necessary for public schools, supported solely by public funds, to charge a sales tax to persons purchasing tickets of admission to school sponsored athletic contests, plays and entertainments.

Respectfully submitted.

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:



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HPWab

Enclosure.