

SCHOOLS:  
SCHOOL DISTRICTS:  
SCHOOL BOARDS:  
CONTRACTS:  
BIDS:  
BIDDING ON CONTRACTS:  
PUBLICATION:  
ADVERTISING FOR BIDS:

Boards of education of school districts in the state of Missouri are not included within the meaning of the terms "officer or agency of this state" as that term is used in Section 8.250, RSMo 1959.

*N.B. §177.086, RSMo Supp 1965  
requires bids on all construction  
over \$2500.*

Opinion No. 139

August 20, 1962

Honorable Hubert Wheeler  
Commissioner, State Department  
of Education  
Jefferson Building  
Jefferson City, Missouri



Dear Mr. Wheeler:

This is in answer to your letter of March 12, 1962, in which you refer to Section 8.250, RSMo 1959, and ask for an official opinion of this office in answer to the following questions:

"Does the term 'officer or agency of this state' have reference only to the state of Missouri, its officers, agencies, boards and commissions?

"Or would boards of education of school districts be included in this act?"

Section 8.250, RSMo 1959, reads as follows:

"No officer or agency of this state of of any city containing five hundred thousand inhabitants or over shall make any contract for the expenditure of moneys appropriated by the state in whole or in part, or raised in whole or in part by taxation, for the erection or construction of any building, improvement, alteration or repair, if the total cost exceeds ten thousand dollars, until public bids therefor are requested and solicited by advertising for ten days in one newspaper in the county where the work is located; and if the cost of the work contemplated exceeds thirty-five thousand dollars, bids shall be solicited by advertisement for ten days in two daily newspapers in the state which

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have not less than fifty thousand daily circulation in addition to the advertisement in the county where the work is located. The number of such public bids shall not be restricted or curtailed, but shall be open to all persons complying with the terms upon which the bids are requested or solicited. No contract shall be awarded when the amount appropriated for same is not sufficient to complete the work ready for service."

This law was first enacted in 1909 and is found at page 346 of the Session Laws of that year. As originally enacted and continued in effect until 1957, this law read as follows:

"No contract shall be made by an officer of this state or any board or organization existing under the laws of this state or under the charter, laws or ordinances of any political subdivision thereof, having the expenditure of public funds or moneys provided by appropriation from this state in whole or in part, or raised in whole or in part by taxation under the laws of this state, or of any political subdivision thereof containing five hundred thousand inhabitants or over, for the erection or construction of any building, improvement, alteration or repair, the total cost of which shall exceed the sum of ten thousand dollars, until public bids therefor are requested or solicited by advertising for ten days in one paper in the county in which the work is located; and if the cost of the work contemplated shall exceed thirty-five thousand dollars, the same shall be advertised for ten days in the county paper of the county in which the work is located, and in addition thereto shall also be advertised for ten days in two daily papers of the state having

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not less than fifty thousand daily circulation; and in no case shall any contract be awarded when the amount appropriated for same is not sufficient to entirely complete the work ready for service. The number of such public bids shall not be restricted or curtailed, but shall be open to all persons complying with the terms upon which such bids are requested or solicited."

We are unable to find any case construing this law with respect to school districts or members of the school board. With respect to cities the St. Louis Court of Appeals in 1935 construed this section in the case of Dunham Construction Co. v. City of Webster Groves, 231 Mo. App. 1089, 84 SW2d 183. In that case the Court held that this law was not applicable to cities containing less than 500,000 population.

In the case of Missouri Public Service Corporation v. Fairbanks, Morse & Co. D.C., 19 F. Supp. 38, the Federal District Court refused to follow the Dunham Construction Co. case and held that this law was applicable to the City of Trenton, Missouri, which had less than 500,000 population.

When the law was changed in 1957, a revisor's note follows Section 8.250, on page 33 of the MRS Cum. Supp. for 1957 which reads:

"Revisor's note: The first sentence in this section was rewritten in 1957 to conform to the decision in Dunham Const. Co. V. City of Webster Groves, 231 Mo. A. 1089, 84 S.W.(2d) 183 (1935), and to make clear its meaning."

Apparently the revision of this section did not make its meaning clear enough because we are now called upon to construe the meaning of the words "officer or agency of this state", and to determine whether a school district and its board of education are included within their purview.

As indicated previously we are unable to find a Missouri case directly in point. From a reading of the available authorities in other jurisdictions, it appears that the decisions construing these and similar words rest on the application of the particular facts of each case to the exact language of the statute involved.

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The case of *Muse v. Prescott School District (Ark.)* 349 SW2d 329, was a case involving the Workmen's compensation Act which referred to ". . . the State of Arkansas and its several agencies . . .", and the question of its coverage for teachers in the public schools. At page 330, the Court stated:

"[2] Does a public school teacher come within the purview of Act 462 of 1949? To state it differently, is a school district an agency of the State, and its employees consequently state employees? Here again, the answer to each question is 'no.'"

At page 331, the court stated:

"Appellant contends, that even though a school district is a governmental subdivision, it still has the status of a state agency, and public school teachers are afforded coverage by the act just quoted. Perhaps, giving the word a loose or general meaning, school districts might be termed state agencies, inasmuch as the Legislature designated to such districts the duty of educating the children of the state in elementary and secondary schools; however, we do not agree that this general term has any application, nor any pertinence, to the language of the statute under consideration."

The Court then concluded that a school district is not an agency of the state.

The case of *Board of Education of Cecil County, to Use of International Business Machines Corporation, v. Phillip Lange, et al.*, 182 Md. 132, 32 A. 2d 693, was a suit on a bond involving the question of whether the performance bond given in connection with the construction of a school building was given to the State of Maryland or any of its agencies. In that case the Court said at page 694:

"As we view this case, the main question for decision is whether the Board of Education of Cecil County, or any other county, in the construction of a school

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building, is or is not an agency of the State, and this depends on the construction of section 45, Article 77, Code (1939), Act of 1916, ch. 506, sec. 250, \* \* \*

At page 695 of that case the Court said:

"[3,4] In the recent case of Clauss v. Board of Education of Anne Arundel County, Md., 30 A. 2d 779, 782 decided after this case was heard below in an elaborate opinion by Judge Marbury we construed section 45, in the repair of a school building (which, of course, includes construction) by the Board of Education as not being done by it as an agency of the State. On the authority of that case, we hold that in the construction of the Cecilton School, it was not a State agency, and that, therefore, section 11 Article 90 of the Code, has no application, and the bond sued on here is not bound by its terms. \* \* \*"

These two cited cases are authority for concluding that school districts and boards of education are not within the purview of the term "officer or agency of this state" as that term is used in Section 8.250, RSMo 1959.

It is our opinion that the legislature did not intend to make Section 8.250, RSMo 1959, applicable to school districts generally and there are cogent reasons supporting this position.

We are not required to make a ruling on whether the school district and school board of St. Louis City are an officer or agency of the City of St. Louis, even though the City of St. Louis has over 500,000 inhabitants, since they are governed by Section 165.603, RSMo 1959, which is a special statute and will control them instead of the general statute under consideration here.

One convincing reason for our conclusion on school districts generally is the language of the statute itself. Section 8.250, RSMo 1959, is applicable only to any " \* \* \* officer or agency of this state or of any city containing 500,000 inhabitants or over \* \* \*." From the authorities previously cited in this opinion, we conclude that a school district is not an agency of the state and

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a school board is not an officer of the state within the meaning of this section. In addition, the advertisement must be " \* \* \* for ten days in one newspaper in the county where the work is located \* \* \*." It is a matter of public knowledge that there are no daily newspapers published in many counties of Missouri. The requirement of advertising for ten days in one newspaper in such counties is difficult of application and this is an additional reason for concluding that school districts are not included within the meaning of Section 8.250, RSMo 1959.

Another reason which impels our conclusion concerning the legislative intent in this instance is the Revisor's Note appearing on page 33 of the MRS Cum. Supp. for 1957 which is quoted previously in this opinion.

The decision in the Dunham Construction case, supra, held that this section as it was previously worded was not applicable to cities containing less than 500,000 population. Although the decision in the Dunham Construction Company case did not deal with school districts, it is clear that if the reasoning of that opinion is applied to school districts, it must necessarily follow that Section 8.250, RSMo 1959, is not applicable to school districts in cities containing less than 500,000 population. The Revisor's Note accompanying the change in the law in 1957 obviously demonstrates that it was the intention of the legislature to follow the decision in the Dunham Construction case and to abrogate the decision in the case of Missouri Public Service Corporation v. Fairbanks, Morse & Co., supra. Following this reasoning the conclusion is inescapable that the legislature intended Section 8.250, RSMo 1959, to apply only to officers and agencies of the state and of cities of more than 500,000 inhabitants. Therefore, school boards and school districts were not intended to be included within the meaning of this section since they are not an officer or agency of this state as that term is used in Section 8.250, RSMo 1959, and since there are no school districts in cities of over 500,000 inhabitants (with the exception of St. Louis City, which is governed by a special statute).

#### CONCLUSION

It is therefore the opinion of this office that boards of education of school districts in the State of Missouri are

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not included within the meaning of the terms "officer or agency of this state" as that term is used in Section 8.250, RSMo 1959.

The foregoing opinion which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

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