SCHOOL DISTRICTS: School Board has no power to spend district's money for public road purposes.

FILE 16

October 13, 1944

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Honorable C. R. Chamberlin
Prosecuting Attorney
Cass County
Harrisonville, Missouri

Dear Sir:

We have your request of September 23, 1944, for an opinion from this department, which request is as follows:

> "I have many persistent inquiries wanting to know if a school district can use the money out of its general fund for the purpose of public roads.
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> "The theory of this request is that roads are needed to get the children to school, and a great many of the school districts are appropriating money out of its general fund to road building.
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> "I find no provision for this, and would be glad to have your most valued opinion about this matter."

In the decision of State v. School District of Kansas City, 62 S.W. (2d) 813, l.c. 816, this principle is enunciated:

> "It is obvious that article VI of the charter furnishes no basis for an assessment of special benefits against public school property. All the way through it speaks of and authorizes only special assessments against private property. Land owned and used for public school purposes is not private property, but strictly public property. This was expressly decided by this court in banc in City of Edina to Use of Pioneer Trust Co. v. School District, 305 Mo. 452, 267 S.W. 112, 36 A.L.R. 1532, 1540, note. It had been so considered in earlier Missouri cases. In City of Clinton to Use of

> Thornton v. Henry County, 115 Mo. 557, 568, 569, 22 S.W. 494, 495, 496, 37 Am. St. Rep. 415, referring to Abercrombie v. Ely, 60 Mo. 23, this court said: 'The effort in that cause was to enforce a mechanic's lien against a schoolhouse, which was public property.' And further on the opinion said: 'In the first place, property owned by a county or other municipal corporation, and used for public purposes, cannot be sold on execution. * * * Hence it has been held that a schoolhouse cannot be sold under a judgment against the board of education,' citing State, to Use of Board of Education, v. Tiedemann, 69 Mo. 306, 33 Am. Rep. 498. What is said in Thogmartin v. Nevada School District, 189 Mo. App. 10, 176 S.W. 472, cited by relator here, does not militate against this view, but accords with it."

Again, we quote the paragraph from the opinion, l.c. 817, which throws light upon our question here:

> "We are not to be understood as attempting to pass judgment on the meaning of any of the sections of the Kansas City charter mentioned in this opinion, other than those directly involved in this case. What we do say is that, if the framers thereof had intended that all the land owned by all the public or quasi public entities mentioned in section 319 should be liable to special assessment for any and all public improvements authorized by the charter, they could and certainly would have said so in clear, plain terms; and it seems they would have put the provision in that part of the charter defining the general powers of the city, rather than to have stated it in vague language in an isolated section dealing with 'Public Improvements.' It is extremely improbable they would have provided in article VI that special benefit assessments in condemnation proceedings should be made against <u>private</u> property, if they had meant by section 319 that all property, whether public or private, should be subject to assessment for that and all other public improvement purposes. At least it can be asserted with positiveness, and we so hold, that neither the general provisions of sections 1 and 3 of article I

> nor the ambiguous provisions of section 319 are sufficient to overcome the explicit limitations imposed by article VI. Public property belonging to a county, city, or school district will not be held liable to special assessment for public improvements, unless it is made so by express enactment or clear implication. City of Clinton, to Use of Thornton v. Henry County, supra, 115 Mo. loc. cit. 567, 22 S.W. 494, loc. cit. 495, 37 Am. St. Rep. 415; City of St. Louis v. Brown, 155 Mo. 545, 561, 56 S.W. 298, 301; Barber Asphalt Paving Co. v. St. Joseph, 183 Mo. 451, 457, 82 S.W. 64, 65; City of Edina to Use of Pioneer Trust Co. v. School District, supra, 305 Mo. loc. cit. 461, 462, 267 S.W. 112, loc. cit. 115, 36 A.L.R. 1532."

In the case of Normandy Consol. School Dist. v. Wellston Sewer Dist., 77 S.W. (2d) 477, l.c. 480, par. 6, the court said:

> "As we view the case at bar, it is not to be distinguished from the cases heretofore cited in the matter of the necessity for express legislative mention of public property as a condition to its being held subject to special assessment; and inasmuch as the sewer law in question neither by express enactment nor by clear implication manifested a legislative intent that school property should be liable to the imposition of the taxes provided for therein, it follows that the taxes assessed against the property of plaintiff school district must be held to have been assessed without authority of law, and for such reason to be null and void."

From the reading of the cases, supra, we find that the courts have unanimously held that public property belonging to a county, city, or school district will not be held liable to special assessment for public improvements, unless it is made so by express enactment or clear implication of the statutes.

We wish to further call attention to the case In Re Farmers' & Merchants' Bank of Chillicothe, 63 S.W. (2d) 829, l.c. 830, pars. 1 and 2, wherein the court said:

> "The school district did not have power to sell its property or authority to dispose of its public revenue save in the manner provided in chapter 57, R.S. Mo. 1929 (section 9194 et. seq. (Mo. St. Ann. Sec. 9194 et. seq., p. 7066)). * * * *"

In the case of Corley v. Montgomery, 46 S.W. (2d) 283, l.c. 286, pars. 8 and 9, the court said:

> "Plaintiffs urge that public officers, such as the members of the school board, are creatures of the law, whose duties are fully provided for by statute; that in a way they are agents, but they are never general agents, in the sense that they are hampered neither by custom nor law, nor are they absolutely free to follow their own volition, citing Lamar Township v. City of Lamar, 261 Mo. 171, 189, 169 S.W. 12 Ann. Cas. 1916D, 740. We do not question the accuracy of the above general statement, nor do we mean to go contrary to it. No doubt, if the board attempts to do something they are not authorized to do, or if, being authorized to do certain things under certain circumstances, they seek to do something outside of or beyond those circumstances, or which, as a matter of law, or unquestionably, are injurious to the public welfare and violative of their public duties, they can be controlled and directed into proper action by the appropriate suit. * * * *"

We do not find any section in the statutes which specifically gives a school district the authority to use money out of its general fund for the purpose of making donations to the building of roads. On the contrary, the Constitution of Missouri, as well as the Legislature, has seen fit to set up divers methods for the maintenance of roads in the state of Missouri.

CONCLUSION.

It is the opinion of this department that the Board of

Directors of a school district cannot use the money out of the school district's general fund for the purpose of building or improving public roads, even though such children from the district traverse the road to and from school.

Respectfully submitted,

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APPROVED:

VANE C. THURLO
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