

SCHOOLS: ) Free public school fund cannot be appropriated  
APPROPRIATIONS: ) to pay the cost of paving tax bills.

December 23, 1942.

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Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of December 2, 1942, as follows:

"I respectfully request your opinion upon the following question:

"Would an appropriation to either the Missouri School for the Deaf or the Missouri School for the Blind, payable out of that part of the State revenue set apart for the support of the free public schools of Missouri, for repairs and replacements or for additions or for the payment of a tax bill for street paving be permissible under the Constitution of Missouri?"

On August 6, 1942, we rendered an opinion to Dr. C. C. Chesterson, President of the Board of Managers for the Missouri School for the Blind, in which we approved the appropriation of part of the money known as free public school fund for operations, additions, repairs and replacements of said school. The provisions of law relating to both the Blind and Deaf Schools are contained in the same article, where the statutes deal with them together (See: Article 25, Chapter 72, R. S. Mo. 1939). It would therefore appear that the conclusion reached in the opinion to Dr. Chesterson applies with equal force to the School for the Deaf. We enclose a copy of that opinion.

This leaves open but one question, and that is: May the General Assembly appropriate out of the free public

school fund, money to pay street paving tax bills assessed against said schools?

Section 6, Article XI of the Missouri Constitution creates the free public school fund and provides that the money constituting that fund "shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatever." Thus, the point is: Are street paving tax bills a part of the cost of "establishing and maintaining" the schools for the Blind and Deaf? Certainly this is not cost of "establishing" either of these schools, nor do we think it can be said that said paving tax bills constitute part of the cost of "maintaining" such schools. The word "maintain" has many meanings. In *Lucas v. St. Louis & Suburban Ry. Co.*, 174 Mo., 1. c. 276, the court defined the word to mean:

"1. To hold or keep in any particular state or condition; to support; to sustain; to uphold; to keep up; not to suffer to fail or decline. 2. To keep possession of; to hold and defend; not to surrender or relinquish. 3. To continue; not to suffer to cease or fail. 4. To bear the expense of; to support; to keep up; to supply with what is needed."

Clearly it is the last meaning set forth that applies here, because Section 6 of Article XI has to do with financial support of the free public schools. We cannot see how the cost of street paving tax bills bears any relation to the "expense" of the school; the "support" of the school; the "keeping up" of the school; or supply the school "with what is needed." Particularly is this true when we consider that the apparent purpose of Section 6 of Article XI is to restrict the purpose for which these funds may be spent, to those having to do with the "diffusion of knowledge and intelligence" by the "gratuitous instruction of all person in this State between the ages of six and twenty years." (Sec. 1, Art. XI, Mo. Const.). We are unable to see how a paving a street can diffuse knowledge and intelligence to a student or even be considered as a part of the equipment used by schools for that purpose.

Another factor to be considered in determining the meaning to be attributed to the restrictive language of Section 6 of Article XI, is as follows: In *Normandy Consol. School District v. Wellston Sewer Dist.*, 77 S. W. (2d) 477 (Mo. App.), the sewer district sought to compel the school district to pay a special benefit assessment. The court held the school district not to be liable, saying (l. c. 478):

"It has been consistently held that neither the Constitution (article 10, Sec. 6, Const. Mo.) nor the statute (section 9743, R. S. 1929 (Mo. St. Ann. Sec. 9743, p. 7863)), both of which provide for the exemption of certain kinds of property, including public property, from taxation, purport to refer to or include an exemption from special assessments for local improvements, and that it is therefore within the legislative power and will, in the passage of legislation providing for the making of local, public improvements, to require public property benefited by the improvement to pay its proportionate share of the expense thereof. *City of Clinton v. Henry County*, 115 Mo. 557, 22 S. W. 494, 495, 37 Am. St. Rep. 415; *Thogmartin v. Nevada School Dist.*, 189 Mo. App. 10, 176 S. W. 473.

"But even though the legislative body has the unquestioned power to require public property located in a benefit district to pay its proportionate share of the cost of the benefit, yet the rule is that public property, which is made use of as an integral part of government in the exercise of a governmental function, is nevertheless to be held exempt from any such special assessment unless in the enactment of the law the lawmakers have manifested a clear legislative intent that such public property

shall be subject to the assessment. This doctrine traces its ancestry back to the ancient common-law principle that the crown was not to be bound by any statute, the words of which restrained or diminished any of his rights or interests, unless he was specially named therein; and the theory of the modernized restatement of the principle is that to require public funds to be paid out for taxes would necessarily divert such funds from the true public use which they are otherwise designed to serve. And of course, if a clear expression of legislative intent is to be required as the basis for the enforcement of special tax bills against public property strictly devoted to public use, then mere general language in a statute will not suffice to warrant such assessment, and public property will not be held included within the scope of any such statute unless by express enactment or clear implication. *City of Clinton v. Henry County, supra*; *City of Edina, etc. v. School Dist. etc., supra*; *City of St. Louis v. Brown*, 155 Mo. 545, 56 S. W. 298; *State ex rel. v. School Dist. of Kansas City, supra*; *Thogmartin v. Nevada School Dist. supra*."

Such was the rule in 1875 when the present Section 6 of Article XI was adopted and such is the rule today, for, so far as we can find, there has never been a statute enacted which subjects state maintained educational institutions to these special benefit taxes. Therefore, it could hardly be contended that a void tax bill is expense of "maintaining" the free public schools. The least restriction that could be implied from Section 6 of Article XI is that the funds be spent on valid and legal obligations.

#### Conclusion

It is therefore our opinion that the free public school fund cannot be appropriated to pay street paving tax

Hon. Forrest C. Donnell

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bills assessed against the property of the state that is being used by the schools for the Blind and Deaf.

Respectfully submitted,

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APPROVED:

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ROY McKITTRICK  
Attorney-General

LLB:EG  
Enc.