ASSESSMENT OF STATE PROPERTY BY A SECOND CLASS CITY FOR STREET IMPROVEMENT:

The property of State Hospital No. 2, which is owned by the State, located in theCity of St. Joseph, Missouri, is not subject to assessment by the city for the purpose of repairing a street which runs through the property of the aforesaid State Hospital No. 2.

September 9, 1957

Honorable C. Rouss Gallop, Director
Department of Public Health & Welfare
State Office Building
Jefferson City, Missouri

Dear Mr. Gallop:

Your recent request for an official opinion reads:

> "In St. Joseph, Missouri, Federal Highway 36 runs East and West across the property of State Hospital No. 2. I have word from the State Hospital that approximately two city blocks of this street is badly in need of repair. We have been asked to join in on the cost of this repair work (by the city) but I have no idea what it amounts to in dollars and cents. Furthermore, I am of the opinion that the State is not responsible for these repairs anyway, but I would like to have your opinion as to the State's responsibility as applying to this repair work."

On August 24, 1950, this department rendered an opinion, a copy of which is enclosed, to R. L. Groves, Fiscal Officer, Adjutant General's Office, in which we held that the property of the state is not subject to local assessment by a city of the third class for the paving of streets. This opinion is not immediately applicable to the City of St. Joseph, which is the subject of inquiry, in view of the fact that St. Joseph is a first class city. However, in that opinion, certain principles are laid down which we do believe are pertinent. On page 3 of the opinion, reference is made to the case of Normandy Consolidated School District v. Wellston Sewer District, (Mo. App.) 77 S.W. 2d 477. We note the following at l.c. 478:

> "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. * * *."

In the light of the above holding in the Normandy case, we state that : "Therefore, we must look to the statutes which authorize cities of the third class to levy assessments for the paving of streets and determine whether or not authority has been given such cities to assess state property for such local improvements. * * *."

In the case of third class cities no such legislative authority was found. Neither does an examination of the statutes reveal that any such authority is vested in first class cities.

In reaching this conclusion, we have taken into account Section 88.333, RSMo 1949, which reads:

> "In all cities of the first class in this state wherein any public improvement is made for which special tax bills are issued against private property for the payment thereof, such tax bills shall also be issued against all county or other public property, church property and all cemeteries, railroad rights of way and property under the control of or owned by public school districts, in the same manner and to the same effect as such tax bills are issued against other private property chargeable for such public improvements; provided, that payment of such tax bills may also be enforced as a prior claim against any general revenue that may have been or shall be received by the authorities managing such property, and suit or other proceedings may be prosecuted therefor the same as any other action at law or in equity."

It will be noted that the above section authorizes the issuance of tax bills against "all county and <u>other public property</u> . . ."

In order to find the meaning of the term "other public property," from the standpoint of determining whether it includes property owned by the state, we look to the case of City of Edina

To Use of Pioneer Trust Company v. School District of City of Edina, 267 S.W. 112. At l.c. 114, the Missouri Supreme Court, en Banc, states:

> "The Kansas City Court of Appeals, in Thogmartin v. Nevada School District, 189 Mo.App. 10, 176 S.W. 473, had before it the precise question and held that public school grounds were not included in the general language 'all property' used in designating the property which should be charged with special taxes for paving an adjoining street, under the cases of Clinton v. Henry County, 115 Mo. 557, 22 S.W. 494, 37 Am. St. Rep. 415, and City of St. Louis v. Brown, 155 Mo. 545, 56 S.W. 298, and Mullins v. Mount St. Mary's Cemetery Ass'n, 239 Mo. 689, 144 S.W. 109, it also held that such special assessment against school property was not authorized by Rev. St. 1909, § 9254, as re-enacted by Act April 3, 1911 (Acts 1911, p. 337), which is as follows:
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> > 'All lands owned by any county, or city, and all other public lands, cemeteries and railroad rights of way, fronting or abutting on any of said improvements, shall be liable for their proportionate part of the cost of such improvement, and tax bills shall be issued against such property as against other property.'
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> " - but only a general judgment shall be recovered therefor against such county, city or railroad company.
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> "The learned court held that (page 13) 'a school district is not a part of the county, nor is it a municipal corporation. State ex rel v. Gordon, 231 Mo. 547, loc. cit. 575. And the title to its property is vested in the school district as a public, and not as a municipal, corporation (State ex rel. v. Henderson, 145 Mo. 329). * * * Hence, under the rule of statutory construction that where particular terms are used, followed by general terms, the latter include only subjects of the same nature and kind as are particularly mentioned,' the lands of school districts ought not to be deemed included within the meaning of the phrase all 'other public lands,' and furthermore (page 14) that 'school grounds do not and cannot come properly within the term

> "public lands." * * * The fact that it [the Legislature] did not mention them is strong evidence that it did not intend them to be included,' and that 'The statute in question provides for a general judgment in the case of a county, city, or railroad company, but in this connection mentions nothing which by any stretch of judicial construction would include a school district.'"

In the light of this determination of the meaning of the term "public property" we do not believe that this term, as used in Section 88.333, supra, could be construed to mean state property, such as State Hospital No. 2 in St. Joseph. Therefore, in the absence of such assessing authority against state property, we must conclude that first class cities, like third class cities in this respect, do not have the power to subject state-owned property, which is the subject of your inquiry, to assessment for the paving of streets upon which state-owned property abuts.

CONCLUSION

It is the opinion of this department that the property of State Hospital No. 2, located in the City of St. Joseph, Missouri, is not subject to assessment by the city for the purpose of repairing a street which runs through the property of the aforesaid State Hospital No. 2, which is owned by the state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW/bi/vlw