MISSOURI STATE SCHOOL FOR DEAF: Not liable for assessment by Fulton, Missouri, for benefits derived from sewer or disposal plant.

February 18, 1939

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Mr. Truman L. Ingle
Superintendent
Missouri School for the Deaf
Fulton, Missouri

Dear Mr. Ingle:

We are in receipt of your letter of February 9th, as follows:

> "The City of Fulton has made a request which places me in a quandary. I am writing to ask if you will give me an opinion regarding the legality of our complying with it.
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> In explanation, may I say that some four or five years ago, the City built a sewage disposal plant for which bonds were authorized at an election. So far, the City has paid off the indebtedness on these bonds as it fell due and has maintained the plant without levying the tax authorized at the bond election. However, the cost of maintenance is now more than was anticipated, and it is my understanding that the City will probably not be able to carry the load without making this taxation which, of course, falls on all property owners throughout the City.
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> Quoting from the letter in which the request is made that we contribute toward the maintenance of this plant, I give you the request as sent to us:
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> 'In view of the fact that the City

finds the upkeep of the Disposal Plant to be so much greater than had been anticipated when it was installed, we are asking your Board to consider the possibility of making a permanent contribution on a monthly basis. We feel that your institution benefits largely from the Disposal Plant, and we are sure you will be willing to do your share, within your jurisdiction, toward m intaining this worthwhile project, which is so necessary for the health of all concerned. The operating expense since the plant was installed has averaged $180.00 per month, plus approximately $70.00 per month, which represents the electric current used for light and power at the Disposal Plant and lift stations. We feel that with some aid from The School for the Deaf and The State Hospital the City should be able to retire the remaining $52,000.00 of outstanding bonds, and the interest on same when due.'

As you see from the request, the statement is made '... that with some aid from the School for the Deaf and The State Hospital the City should be able to retire the remaining $52,000.00 of outstanding bonds, and the interest on same when due'. I infer that the City by seeking assistance from us is attempting to remove the need of levying the authorized tax.

May I ask that you give me an opinion as to whether or not this is a legal responsibility of the Missouri School for the Deaf and whether or not we can legally pay a portion of this indebtedness. In my opinion, we should keep in mind the fact that a tax levy has been authorized and that while this school does benefit from the sewage disposal plant, it does not do so any more than any property owner within the city limits.

> Our Board of Managers holds its regular monthly meeting on Tuesday, February 21. If it is possible and does not inconvenience you too much, I would appreciate having your opinion in time to present the matter to my Board at this regular meeting."

Section 9688 R. S. Mo. 1929 provides that:

> " * * * the Missouri School for the Deaf at Fulton shall be regarded, classed and conducted wholly as educational institutions of the state."

Section 9705 R. S. Mo. 1929 provides for the control of the school property:

> "The board of managers of each school shall have the care and control of all the property, real and personal, owned by such school, and the title to all real estate or personal property now owned by such school, or by the state for its use, or that may hereafter be purchased by or donated to such school shall be vested in such board of managers of the respective schools, for the use and benefit of the said school. The board of managers of either school shall not sell or in any manner dispose of any real estate belonging to the school without an act of the general assembly authorizing such sale or disposal of such real estate. The boards of managers shall provide their respective schools with an official seal."

There can be no question but that the Missouri School for the Deaf is a public school for a particular class of

children, and that the property belongs to the state, for the board of managers of said school has no authority to dispose of its real estate "without an act of the general assembly authorizing such sale or disposal of such property.

Section 6092 R. S. Mo. 1929 provides which cities or towns in this State may elect to become cities of the third class:

> "All cities and towns in this state containing three thousand and less than thirty thousand inhabitants, which shall elect to be a city of the third class, shall be cities of the third class."

The 1930 decennial census reports Fulton, Missouri, as containing a population of 6,105 people, and we therefore assume that Fulton is a city of the third class.

Section 6872 R. S. Mo. 1929 provides that cities of the third class may, by an election held for that purpose, adopt the provisions of Sections 6872 to 6889, inclusive, have power by ordinance to provide drains and sewers, and all necessary plants for the disposal of sewage.

Section 6875 R. S. Mo. 1929 provides that "the cost of constructing such sewers and disposal plants shall be paid in special tax bills, as hereinafter provided, against all lands, exclusive of highways, streets and alleys, embraced within the sewer district or districts in or for which the sewer or any part thereof may be constructed."

Section 6883 R. S. Mo. 1929 provides that the whole cost of acquiring the use of the drainage or water course, and of the right of way for any such sewer, including the land for the erection and maintenance of disposal plants, "shall constitute a lien on all the lands within the district or districts, exclusive of public highways, streets and alleys so declared to be deemed benefited in proportion to the area of each tract, and shall be collected by special tax."

Section 6885 R. S. Mo. 1929 provides that "the cost

of constructing all sewers, including the erection of all necessary disposal plants, in or for any district or districts as aforesaid, shall be paid for wholly in special tax bills against the lands embraced within such district or districts, exclusive of public highways, streets and alleys, in proportion to the area of each tract * * * * *."

Article 10, Section 6 of the Missouri Constitution, declares what property is exempt from taxation:

> "The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

Section 9743 R. S. Mo. 1929 pursuant to the above constitutional provision states in part:

> "The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; third, lands and other property belonging to this state; * * * * *"

A question similar to the one presented in this case was determined by the court in the case of Normandy Consolidated

School District v. Wellston Sewer District 77 S. W. (2d) (Mo. App) 477. The court said:

"In this instance the specific point of inquiry is whether the Legislature, in the enactment of the sewer law in question, saw fit to make the property of school districts amenable to the special assessments for the local improvements provided for therein; such assessments being made pursuant to a taxing power conferred by the Legislature upon the boards of supervisors charged with the duty of administering the affairs of the sewer districts organized under such law.

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."

Now as towhether the Legislature's intent to include state property is clearly to be implied from the all inclusive nature of the language used in Section 6875, supra, "against all lands", and Section 6883 Supra "a lien on all the lands within the district or districts," and Section 6885 R. S. Mo. 1929 "against the lands embraced within such districts."

The court in the Normandy Consolidated School District case (l.c. 479) in holding that such general language may not be held to constitute the expression of a clear intent

that public property should be liable to the tax along with all private property said:

> "Now in the case at bar there is no claim that the Legislature made any express mention of school property as being subject to assessment for the special taxes provided for in the law, but what the sewer district does insist is that such a legislative intent is clearly and necessarily to be implied from the all-inclusive nature of the language used. Suffice it merely to say that by section 11037 of the law (Mo. St. Ann. Sec. 11037, p. 7405) it was provided that a uniform tax should be levied 'upon all the lands' within any sewer district, and by section 11044 (Mo. St. Ann. Sec. 11044, p. 7411) that upon the assessment of benefits a tax of a portion of such benefits should be levied 'on all lots, tracts and parcels of land, railroad and other property in the district,' said tax to be apportioned to and levied 'on each lot, tract, or parcel of land or other property in said district' in proportion to the benefit assessed. No doubt similar expressions are to be found elsewhere in other sections of the act, but the provisions heretofore specifically referred to are enough to indicate the general character of the language used by the Legislature in designating the property it intended to be held subject to the tax.
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> At first blush it might indeed seem that a legislative intent to hold public property subject to the assessment would be implied from the language requiring the tax to be levied upon all the lands, lots, tracts, and parcels of land in the district, and yet as the authorities run <u>such mere general language may not be held to constitute the</u>

expression of a clear intent that public property should be liable to the tax along with all private property."

The property of the Missouri State School for the Deaf being devoted to a strictly public use, and not having been made subject to assessment for benefits derived from sewer and disposal plants by a city of the third class, either by express enactment or by clear implication, we are of the opinion that the Missouri State School for the Deaf is not liable for assessment by the city of Fulton for benefits derived from a sewer or disposal plant.

As to whether the School could legally make a voluntary contribution to the City for benefits obtained from the disposal plant would, in our opinion, be dependent on the Appropriation Act of the Legislature now in session, appropriating funds to the School for such purpose.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General
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