SCHOOLS: No obligation on part of either sending or receiving district to provide free transportation for pupils
TAXATION: attending high school in another district, but if provided, sending district liable for costs in excess of state aid, provided such obligation can be met out of revenue provided by constitutional levy. School district cannot be forced to increase levy above constitutional maximum.

June 19, 1953

Honorable Harry J. Mitchell
Prosecuting Attorney
Marion County
Palmyra, Missouri

Dear Sir:

This is in response to your request for an opinion, dated April 22, 1953, which omitting caption and signature reads as follows:

> "I have been requested by the school board of a Marion County School District to ask for your opinion on a problem, the facts of which are as follows:
>
> "1. The board represents a rural district.
>
> "2. The Palmyra school district and the Monroe City School District have been providing transportation for the high school students of the district.
>
> "3. The rural district has been paying for the transportation of its high school pupils.
>
> "4. The people of the district at a recent meeting voted 19 to 15 to reduce the tax levy to the minimum amount allowed by law, and 19 to 15 to pay for the transportation of its high school students.
>
> "The questions are:
>
> "1. Is the rural district required by law to pay for the transportation of

its high school students?

"2. Under the tax levy voted, sufficient money will not be available to pay for the transportation, can the school district be forced to increase its levy?"

By further correspondence you have clarified the phrase "minimum amount allowed by law" as being the maximum amount specified in Section 11(b) of Article X, Constitution of Missouri, 1945, which becomes the minimum amount for purposes of state aid under Section 161.040, RSMo 1949, more specifically, sixty five cents on each one hundred dollars of the assessed valuation.

The answer to the first question submitted by you turns upon the interpretation of Section 165.143, RSMo 1949, which reads as follows:

"165.143. When any school district makes provision for transporting any or all of the pupils of such district to a central school or schools within the district, and the method of transporting is approved by the state board of education the amount paid for transportation, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district for the ensuing year. When the board of directors of any school district makes provision for transporting the high school pupils whose tuition it is obligated to pay, to the school or schools they are attending, and the method of transporting is approved by the state board of education, the amount paid for transporting such pupils, not to exceed three dollars per month for each pupil transported shall be a part of the state apportionment to such district for the ensuing year, if no part of the minimum guarantee of such district has been used to pay any part of the cost of transporting such pupils.

> When the board of directors of a district that admits nonresident pupils to its high school makes provision for transporting such pupils to such high school, and the method of transporting and the transportation routes are approved by the state board of education before the transportation is begun, the amount spent for transporting such pupils, not to exceed three dollars per month for each pupil transported shall be a part of the state apportionment to such district for the ensuing year, if no money apportioned to such district from any public fund or funds has been used to pay any part of the cost of transporting such pupils, except money apportioned to such district to pay the cost of transporting such pupils; provided, any cost incurred for transporting such pupils in excess of three dollars per month for each pupil transported may be collected from the district of the pupil's residence, if said cost has been determined in the manner prescribed by the state board of education; and provided further, that for the transportation of pupils attending private schools, between the ages of six and twenty years, where no tuition shall be payable, the costs of transporting said pupils attending private school shall be paid as herein provided for the transportation of pupils to public schools."

At no other place in the school laws are we able to find a requirement that free transportation be furnished pupils attending high school in a district different from that of their residence. Section 165.143, supra, merely says that when the board of directors of the sending district makes provision for transporting such pupils, and conforms with the other requirements of the statute, that district shall be entitled to the specified state aid. It follows, of course, that if the cost of transportation exceeds the amount of state aid, the excess becomes an obligation of the sending district.

On the other hand, if the receiving district provides

for the transportation of such pupils and meets the other requirements of the statute, then the receiving district becomes entitled to the state aid. Any costs in excess of the state aid remain the obligation of the sending district which, as the statute specifically provides, "may be collected from the district of the pupils' residence."

The answer to your first question then is this:

There is no obligation on the part of either the sending or receiving district to provide free transportation for pupils attending high school in a district different from that of their residence, but if such transportation is provided, the sending district is obligated for the costs in excess of the state aid.

The second question submitted is whether the school district can be forced to increase its levy above the constitutional maximum of sixty five cents on each one hundred dollars assessed valuation.

That question was answered in State ex rel. Hufft v. Knight, 121 S.W. 2d 762, 764, (Mo. App. 1938), where the court said:

> "Mandamus, of course, cannot be employed to control the discretion of one authorized to determine the levy necessary to provide funds necessary for a district. Yet, a school district owes the duty to pay an obligation established by a judgment against it, and its officers are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment. Its duty to do so results from the plain moral as well as the legal obligation of a municipality or district to pay its debts and no discretion within the legal limitation of the performance of the duty can rightfully be claimed or exercised. <u>However, a court cannot by mandamus proceedings compel a municipal sub-division of the state to levy a tax in excess of the maximum fixed by the Constitution.</u> Bushnell et al. v. Drainage District, Mo. App., 111 S.W. 2d 946. The duty of

> a school district to discharge its obligations if it can do so by a levy within the limits provided by law, is mandatory upon the district and its directors, and it is mandatory that they certify a levy within the legal limits, sufficient to retire the obligations of the district and mandamus does not interfere with any discretionary powers entrusted to the directors. State ex rel. R. E. Funsten Co. v. Becker et al., Judges of St. Louis Court of Appeals, 318 Mo. 516, 1 S.W. 2d 103; State ex rel. Kirkwood School District v. Herpel, Mo. App., 32 S.W. 2d 96."
>
> (Emphasis ours.)

In the case submitted by you, it is apparent that the available funds of the district must first be used in order to provide a public school or schools within the district for a period of eight months in each school year and to pay the tuition of pupils attending high school in a district different from that of their residence. Section 161.040, RSMo 1949, reads, in part, as follows:

> "161.040 - 1. The board of directors of each and every school district in this state is hereby empowered and required to maintain the public school or schools of such district for a period of at least eight months in each school year. In order that each and every district may have the funds necessary to enable the board of directors to maintain the school or schools thereof for such minimum term and to comply with the other requirements of this law it is hereby provided that when any district has legally levied for school purposes (teachers' wages and incidental expenses) a tax rate not less than the constitutional limit which the school board without a vote of the people is authorized to levy on each one hundred dollars of the assessed valuation of property therein, such districts shall be allotted out of the public school fund of the state

> an equalization quota to be determined by adding seven hundred and fifty dollars for each elementary teaching unit to which the district is entitled according to the provisions of section 161.020, one thousand dollars for each high school teaching unit to which the district is entitled according to the provisions of section 161.020, and the amount approved for resident transportation and then subtracting from the total, which total shall be known as the minimum guarantee of such district, the sum of the following items: The computed yield of a tax of twenty cents on each one hundred dollars of the assessed valuation of the property of the district, the sum received the preceding year from the county and township school funds, and the sum estimated to be received for the current year for school purposes from the railroad, telegraph, utility and all other taxes based on assessments distributed by the state tax commission. * * * "

Section 165.257, Cumulative Supplement, RSMo 1951, reads:

> 165.257. The board of directors of each and every school district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered; but the rate of tuition paid shall not exceed the per pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars

for the entire term, which deduction shall be added to the equalization quota of the district maintaining the school attended, as calculated for the ensuing year, if said district is entitled to an equalization quota. If the district maintaining the school attended is not entitled to an equalization quota, then such deduction shall be added to the teacher quota of said district, as calculated for the ensuing year, but the attendance of such pupils shall not be counted in determining the teaching units of the school attended. The cost of maintaining the school attended shall be determined by the board of such school district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, maintenance and replacements. Per pupil cost of the school attended shall be determined by dividing the cost of maintaining the school by the average daily pupil attendance. In case of any disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. Subject to the limitations of this section, each pupil shall be free to attend the school of his or her choice; but no school shall be required to admit any pupil, or shall any school be denied the right to collect tuition from a pupil, parent, or guardian, if the same is not paid in full as hereinbefore provided. In no case, however, shall the amount collected from a pupil, parent or guardian exceed the difference between fifty dollars and the per pupil amount actually paid by the state, nor shall the amount the district of the pupil's residence is required to pay exceed the amount by which the per pupil cost of maintaining the school attended is greater than fifty dollars. If, for any year, the amount collected from a pupil, parent, or guardian exceeds the difference

> between fifty dollars and the per pupil amount actually paid by the state, the excess shall be refunded as soon as the fact of an overcharge is ascertained."

The above sections under the 1939 revision were construed in the case of Linn Consolidated High School District No. 1 v. Pointer's Creek Public School District No. 42, 203 S.W. 2d 721, 724. The court said:

> "Section 10454, Revised Statutes Missouri 1939, Mo. R.S.A., requires a district such as defendant to maintain an eight months' grade school. Section 10458 requires such a district to pay the tuition of its children who have finished the grades and attend high school in another district. Both statutes are mandatory to the extent that the district can comply by levying the rate of taxes permitted by the constitution."

From your request, we gather that after these obligations have been met, no funds will be available under the sixty five cents tax levy to provide transportation for such high school pupils. In such event, if the sending district should provide the transportation and voluntarily obligate itself beyond the revenue actually provided for the year, the contract would be void because of the provisions of Section 26(a), Article VI, Constitution of Missouri, 1945, which reads as follows:

> "No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution."

The section comparable to this under the 1875 Constitution (Section 12, Article X, Missouri Constitution of 1875), was also construed in Linn Consolidated High School District No. 1 v. Pointer's Creek Public School District No. 42, supra. There the court said, l.c. 724:

> "The difference between a debt incurred by a voluntary contract and one imposed by the mandatory terms of a statute is this: the former is void if beyond the revenue actually provided for the year, the latter is valid if within the revenue which could have been provided. State ex rel. Hufft v. Knight, Mo. App., 121 S.W. 2d 762, 764, though decided on facts differing from those in the instant case, is in point on principle. That opinion says: 'The duty of a school district to discharge its obligations, if it can do so by a levy within the limits provided by law, is mandatory upon the district and its directors, and it is mandatory that they certify a levy within the legal limits, sufficient to retire the obligations of the district * * *.'"

If the receiving district should provide the transportation and the costs thereof should exceed the amount of the state aid, the obligation in your case, although seemingly mandatory, would still be void because in excess of the revenue which could have been provided within the constitutional limitation of sixty five cents on each one hundred dollars assessed valuation. In any event, the receiving district could not collect the excess from the sending district because under the levy no funds would be available and the district could not be forced by mandamus to increase its levy above the constitutional limits. See State ex rel. Hufft v. Knight, supra.

CONCLUSION

Therefore, it is the opinion of this office that there is no requirement that either the receiving or sending school district provide free transportation for pupils attending high school in a district different from that of their residence, but if such transportation is provided the sending district is obligated to pay the cost of transportation in excess of the specified state aid, provided that such obligation can be met out of available funds and revenue realized through the maximum constitutional levy without voter approval, which in the case of a rural district is sixty five cents on each

one hundred dollars of the assessed valuation. If the obligation cannot be met out of the revenue provided as above, the obligation is void.

It is the further opinion of this office that a school district cannot be forced to increase its levy above the constitutional maximum of sixty five cents on each one hundred dollars of the assessed valuation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. John W. Inglish.

Very truly yours,

JOHN M. DALTON
Attorney General

JWI:lrt