

SCHOOLS: Pupils residing on land owned by United States  
entitled to all school privileges.

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December 11, 1942

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Honorable Robert V. Niedner  
Prosecuting Attorney  
St. Charles County  
St. Charles, Missouri

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Dear Sir:

Under date of December 1, 1942, you wrote this  
office requesting an opinion as follows:

"The School District of the City of St. Charles, Missouri, and a common school district in St. Charles County have submitted to me a question with the request that I obtain an answer from your office.

"The common school district involved does not maintain a high school and pupils resident therein attend the high school maintained by the School District of the City of St. Charles and the directors of the common school district pay tuition for such students, all as provided in Section 10458 of the Revised Statutes of Missouri for 1939.

"There is in the common school district, however, certain land which is owned by the federal government by reason of having been taken through condemnation proceedings for purposes of maintaining flood control on the Mississippi River. A family lives upon some of these federal lands and the directors of the common school district do not feel that they should pay tuition for pupils of such a household on the theory that the Government's taking such

lands within the district took the lands out of the district and that therefore, Section 10458 would no longer apply. The School District of the City of St. Charles, on the other hand, feels that the federal land is within the common school district and while it may not be taxable, the directors of the district are bound by Section 10458, supra, as regards pupils living on such federal lands. I would appreciate your opinion on whether or not the directors of the common school district are required under Section 10458 to pay tuition for the pupil living on federal lands within the common school district. I have looked through the statutes and annotations but have been able to find nothing that can persuade me to the view the directors of the common school district take. If, however, you can give us information to that effect we would very much appreciate it."

Your attention is directed to Section 1, Article XI of the Constitution of Missouri:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years."

Pursuant to the direction in the above section of the Constitution all of the school laws have been enacted. Section 10345 directs the enumeration of persons of school age and is in part as follows:

"The board of directors of each district shall, between the thirtieth day of April and the fifteenth day of May of each year take, or cause to be taken, and forwarded to the County Superintendent of Schools an enumeration of the names of all persons over six and under twenty years of age resident within the district, designating male and female, white and colored, and age of each, together with the full name of the parent or guardian of each child enumerated;  
\* \* \* \* \*

and Section 10458 furnishes the authority for sending pupils from districts which do not maintain high schools to districts maintaining high schools at the expense of the district. In the case of *State ex rel Burnett v. School District*, 335 Mo. 803, the Supreme Court ruled the duty of paying the tuition was squarely upon the sending district, and the pupils could not be made to pay tuition.

There is no distinction made by these sections of the statutes and Section 1 of Article XI of the Constitution between persons of school age who reside on tax-exempt land and those who reside on tax-paying land.

The rule is announced in the case of *State ex rel v. Clymer*, 164 M. A. 671, that statutes relating to attendance in schools should be liberally construed in order to open the doors of the schools to pupils and not to close them. It has further been held that the word, "residence" as used in the school laws is not synonymous with domicile, that it means merely place of abode, *State ex rel v. Smith*, 64 M. A. 613, and this rule was approved in *State ex rel Logan et al v. Shouse et al*, 257 S. W. 827.

From the foregoing it would appear that any child of school age who has his place of abode within a school district which does not maintain a high school would be entitled to attend a high school in some district maintaining a high school at the expense of the district in which the child resides. This, of course, would not be true if the child was moved into the district temporarily solely for the purpose of attending school.

It remains for us to determine whether or not a child residing on land within a school district which is exempt from taxation should be considered as residing within the district. Land owned by the United States is exempt from taxation. Section 10937 R. S. Mo., 1939.

By the authority of the seventeenth clause of Section 8, Article I of the Constitution of the United States, the federal government may exercise exclusive legislative power over all lands acquired for the construction of forts, arsenals, magazines, dockyards and other needful buildings when the land is acquired with the consent of the state within which it is located and sovereignty is ceded by the state. The General Assembly of Missouri has sought to give consent of the State to the acquiring of lands by the United States for certain purposes. Section 12691 R. S. Mo., 1939:

"The consent of the State of Missouri is hereby given in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States to the acquisition by the United States by purchase or grant of any land in this State which has been or may hereafter be acquired, for the purpose of establishing and maintaining postoffices, internal revenue and other government of-

ices, hospitals, sanatoriums, fish hatcheries, game and bird preserves and land for reforestation, recreational and agricultural uses."

and by Section 12693 R. S. Mo., 1939, is reserved to the State of Missouri certain elements of sovereignty:

"The jurisdiction of the state of Missouri in and over all such land purchased or acquired as provided in section 12691 is hereby granted and ceded to the United States so long as the United States shall own said land: Provided, that there is hereby reserved to the state of Missouri, unimpaired, full authority to serve and execute all process, civil and criminal, issued under the authority of the state within such lands or the buildings thereon."

There has always been a distinction between land acquired by the United States by purchase and that acquired by condemnation. An excellent discussion of this distinction is found in *James v. Dravo Contracting Co.*, 302 U. S. 134, 58 S. C. R. 208, 215:

" \* \* \* \* \* The right of eminent domain inheres in the federal government by virtue of its sovereignty, and thus it may, regardless of the wishes either of the owners or of the states, acquire the lands which it needs within their borders. *Kohl v. United States*, 91 U. S. 367, 371, 372, 23 L. Ed. 449. In that event, as in cases of acquisition by purchase without consent of the state, jurisdiction is dependent upon cession by the state, and the state may qualify its cession by reservations not inconsistent with the governmental uses.

Story on the Constitution, volume 2, section 1227; Kohl v. United States, supra, 91 U. S. 337, at page 374, 23 L. Ed. 449; Fort Leavenworth R. R. Co. v. Lowe, supra; Surplus Trading Company v. Cook, supra; United States v. Unzeuta, supra. The result to the federal government is the same whether consent is refused and cession is qualified by a reservation of concurrent jurisdiction, or consent to the acquisition is granted with a like qualification. As the Solicitor General has pointed out, a transfer of legislative jurisdiction carries with it not only benefits, but obligations, and it may be highly desirable, in the interest both of the national government and of the state, that the latter should not be entirely ousted of its jurisdiction. The possible importance of reserving to the state jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the government expand and large areas within the states are acquired. • There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction or the state be compelled to grant it in giving its consent to purchases."

The Congress of the United States has recognized the distinction between lands acquired for flood control purposes and those acquired for other purposes by the enactment of Section 701 C.-3, Tit. 33, U. S. C. A.:

"25 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of the leas-

ing of lands acquired by the United States for flood control purposes shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such property is situated: Provided, That when such property is situated in more than one State or county the distributive share to each from the proceeds of such property shall be proportional to its area therein."

Following this federal act the General Assembly of Missouri has enacted Sections 12695 and 12696 R. S. Mo., 1939, which sections are respectively as follows:

"All sums of money heretofore received or that may hereafter be received from the United States under an act of Congress, approved May twenty-three, nineteen hundred eight, being an act providing for the payment to the states of twenty-five per centum of all money received from the national forest reserves in the states to be expended as the legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated, shall be expended as follows: Seventy-five per cent for the public schools and twenty-five per cent for roads in the counties in which national forests are situated. Such funds shall be used to aid in maintaining the schools and roads of those school districts that lie or may be situated partly or wholly within or adjacent to the national forest in such county. The distribution to each county from the proceeds received on account of a national forest within its boundaries shall be in proportion that the area



of such national forest in such county bears to the total area of such forest in the state, as of June thirtieth of the fiscal year for which the money is or was received."

"All sums of money heretofore received or that may hereafter be received from the United States, or any department thereof under an Act of Congress approved June 28, 1938, being an act providing for the payment to the several states of 25 per centum of all moneys received for leases of land situated in the various states to which the United States owns fee simple title under the Flood Control Act of May 15, 1938, as amended and supplemented, to be expended as the General Assembly may prescribe for the benefit of the public schools and public roads of the county or counties in which such government land is situated, or as provided by any Acts of Congress authorizing the distribution of income or revenue from such lands owned by the United States of America or any of its departments, bureaus or commissions or any agency of the United States of America, to states or counties or as provided by any amendments to said acts, shall be expended as the county court of the county entitled to receive such funds may direct in accordance with the provisions and regulations as have been or may be in the future provided by the Acts of Congress providing for such distribution to states and counties."



Hon. Robert V. Niedner

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CONCLUSION

From a consideration of all the foregoing, we find nothing which would indicate that a school district which does not maintain a high school would be relieved of the duty of paying the tuition of pupils who have completed the course in the schools maintained by the district and wish to attend high school in a district maintaining a high school.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney-General

APPROVED:

ROY McKITTRICK  
Attorney-General

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