

SCHOOLS: Supplement to opinion No. 74, May 15, 1935,
to J. E. Pummill.

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Mr. J. E. Pummill, Superintendent
Eureka Public Schools
Eureka, Missouri

Dear Sir:

This Department, under date of May 15, 1935, rendered you an opinion in regard to a school district's right to levy a maximum tax of \$1.00 on the \$100.00 valuation. From the correspondence and the telephone conversation we had with you we assumed, for the purpose of said opinion, that the school district in question had been organized as a town district under the provisions of Sections 9325 and 9326, R. S. Mo. 1929.

Since writing said opinion we have had a communication from Mr. William J. Becker, Attorney at Law, Clayton, Missouri, questioning our opinion, apparently for the reason that said district was never organized as a town district. We are still unable to determine definitely, from your letters or from Mr. Becker's letter, whether or not your school district was ever so organized. In order, therefore, that the opinion of this Department may not be misinterpreted, we desire to supplement same. We call your attention to the case of State ex rel. Brown v. Woods, 61 S. W. (2d) 732, not cited in our original opinion. At l. c. 733 the Court said:

"On May 24, 1923, the Patterson consolidated school district was organized under sections 11257, 11258, 11259, R. S. 1919 (sections 9351, 9352, 9353, R.S. 1929 (Mo. St. Ann. Secs. 9351, 9352, 9353)). It is governed by six directors. The organization was made by consolidating Patterson, Woods, Camp Creek, Damen, Ring Creek, and Cherry Grove common-school districts, none of which at the time of the consolidation, nor prior thereto, has an enum-

eration of two hundred children of school age. At that time and at all times prior thereto the village of Patterson, with a population of seventy-five, was the only village, town, or city within the limits of the territory comprising the consolidated district. It was never incorporated, but a plat of the village was made on May 25, 1861, and filed in the office of the circuit clerk and ex officio recorder of deeds of said county on May 27, 1861.

"The filing of the plat on the recorder's office of the county authorized the Patterson common school district to organize as a town or city school district under the provisions of sections 11236, 11237, R. S. 1919 (sections 9325, 9326, R. S. 1929 (Mo. St. Ann. Secs. 9325, 9326)). However, it was never so organized. It is clear from the facts above stated that the Patterson consolidated school district falls under class 2 of the classification statute. After its organization, and with the village of Patterson within the consolidated district, it could have organized as a town or city district under section 11257, R. S. 1919 (Section 9351, R.S. 1929,) and sections 11236, 11237, R. S. 1919 (sections 9325, 9326, R. S. 1929.) However, it was never so organized.

"(2) Thus it appears that by organization under sections 11257, 11258, 11259, R. S. 1919, and by classification under section 11123, R. S. 1919, which was in force at the time of the consolidation, the Patterson consolidated district is not a city or town district. It is one of the 'other districts' as that term is used in section 11, article 10, of the Constitution. It follows that

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the rate of taxation for school purposes in said districts cannot exceed 65 cents on the \$100 valuation of the property in the district."

Bearing the above and all that was said in the original opinion in mind, we supplement the conclusion of the original opinion so it will read as follows:

CONCLUSION.

A school district which contains within its boundaries a city, town or village, whether incorporated or not, the plat of which has been filed in the Recorder's office of the County in which the same is situated, and which has been organized as a town or city school district, under the provisions of sections 9325 and 9326, R. S. Mo. 1929, may by a vote of the people levy a maximum tax of \$1.00 on the \$100.00 valuation, notwithstanding the fact that said school district was later organized into a consolidated district.

It is our further opinion that a school district not classified as a city or town district, under the provisions of section 9194 R. S. Mo. 1929, and not organized as a town district under the provisions of sections 9325 and 9326, or under the provisions of section 9351, R. S. Mo. 1929, cannot levy a tax in excess of 65 cents on the \$100.00 valuation.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General.

JET:H