

SCHOOLS: Apportionment of funds received from
SCHOOL DISTRICTS: County Foreign Insurance Tax Fund in
INSURANCE: July, 1955, should have been made on
COUNTY FOREIGN INS. TAX FUND: basis of 1954 enumeration; district
COUNTY CLERK: receiving less than its proper share
of supplemental apportionment can sue
districts receiving excess amounts and
recover such amounts provided money has
not already been spent for school pur-
poses; error may also be corrected
voluntarily by co-operative action of
officers and agencies concerned.



November 21, 1955

Honorable Robert L. Carr
Prosecuting Attorney
Washington County
Potosi, Missouri

Dear Mr. Carr:

This is in response to your request for opinion dated September 21, 1955, which reads as follows:

"In July, 1955, the Washington County Treasurer received from the State Auditor a supplementary apportionment by the State Comptroller from the County Foreign Insurance Tax Fund to be distributed by the County Clerk to the various school districts for free text books as provided in Section 170.220 R.S.Mo. 1949. This special distribution came at a different time from the regular annual October payment, and was in the amount of \$7,322.00.

"According to a letter dated July 8, 1955, from Hubert Wheeler, Commissioner of the Division of Public Schools, directed to all District and County Superintendents, 'the amount paid to school districts in this apportionment is \$1,366 cents per pupil based on the 1954 enumeration.' The Clerk of the Washington County Court distributed the money to the various school districts within the county according to an enumeration of students taken in May, 1955, when 2221 children were enumerated in Reorganized School District R-3, which enumeration was 1614 less than were enumerated in 1954. The change was due to a change of boundary line voted at the annual election of April 5, 1955, in which an area of about ninety square miles was taken from

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Reorganized School District R-3 and attached to a common school district, Kingston No. 14, Washington County. If, as outlined in Mr. Wheeler's letter, the County Clerk should have distributed to Reorganized School District R-3 the sum of \$1.366 per pupil based on the 1954 enumeration, Reorganized School District R-3 was entitled to receive the sum of \$5,238.61; instead the Clerk distributed to Reorganized School District R-3 the sum of \$3,581.45, which represents a shortage of \$1,657.16. The result was, of course, that the other school districts within Washington County received more money per pupil from the apportionment than the \$1.366 per pupil figure mentioned by Mr. Wheeler.

"The directors of District R-3 contend that the County Clerk was in error in making the distribution as described, and it is the position of the County Clerk that he acted in accordance with Section 170.220 R.S.Mo. 1949, which directs the Clerk to apportion the free text book funds to each school district, 'by multiplying the number of children on the last enumeration list of said school district by the ratio used by the State Auditor in making the distribution of said Foreign Insurance Tax Money among the counties of the state,'.

"The opinion of your office is respectfully requested as to whether the County Clerk should have used the enumeration list made in 1954, or the May, 1955, enumeration, when he distributed the free text book funds. Further, if the 1954 enumeration should have been used by the Clerk, what means may be followed to correct the error, that is to recover the overpayment to districts which were overpaid, if they were, and pay the Reorganized School District R-3 the sum of money to which it was properly entitled?

"In his letter dated July 18, 1955, a copy of which was mailed to your office, Mr. Newton Atterbury, State Comptroller and Director of the Budget, suggested that we seek assistance from your office, and reference is made to his letter."

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The basis of the apportionment of the County Foreign Insurance Tax Fund is set forth in Section 148.360, RSMo 1949. That section provides:

"On or before the first day of October of each year, the state comptroller shall apportion to the counties and the city of St. Louis, on the basis of the number of school children in each, as shown by the last enumeration, certified by the commissioner of education, on which the school moneys are apportioned and distributed, all of the moneys to the credit of the county foreign insurance tax fund, and warrants shall be issued in favor of the treasurers of the counties and the city of St. Louis."

This section is further supplemented by Section 170.220, RSMo 1949, to which you refer and which, in part, reads as follows:

"1. When the money apportioned under the provisions of section 148.360, RSMo 1949, has been received by the treasurers of the various counties and the city of St. Louis, it shall be the duty of the county clerk of each county to apportion said money among the various school districts in each county in the following manner: The amount to be apportioned to each school district shall be determined by multiplying the number of children on the last enumeration list of said school district by the ratio used by the state auditor in making the distribution of said foreign insurance tax moneys among the counties of the state, and the county court shall order the county treasurer to place to the credit of the free textbook fund of each such school district, the amount thus obtained, or shall draw its warrant in favor of the proper township treasurer or treasurers for the amount due the districts of the various townships, and shall also draw its warrant in favor of the treasurer of any school district organized as a city, town or consolidated district for the amount due such district. The money thus received shall be known as the 'Free Textbook Fund' for each such district, and the board

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of education or the board of directors of each such district shall, when so directed by a majority vote of the qualified voters of the district voting on such question at an annual or special election, with this fund purchase and provide textbooks free for the use of the pupils in the elementary grades and after free textbooks have been supplied to all children in the elementary grades, the balance remaining in said textbook fund may be expended for supplementary, library, and reference books."

In the analysis of this problem it might be well at this juncture to point out some discrepancies in the legislative scheme for the apportionment of this fund which have been brought about by the amendment of certain sections of the law without consideration being given to the whole scheme.

For example, Section 148.360, supra, provides that the basis for apportioning this fund is the last enumeration, "certified by the commissioner of education, on which the school moneys are apportioned and distributed." At the time of the passage of Section 148.360 in 1874 school moneys were apportioned on the basis of enumeration. Since then, however, other laws have been revised and amended so that apportionment of state school moneys is no longer on the basis of enumeration but on the basis of average daily attendance, etc. (Section 161.030, RSMo 1949; Senate Bill No. 3, 68th General Assembly, approved by the people on October 4, 1955.) Further, Section 148.360 assumes a certification of the last enumeration by the commissioner of education to the comptroller, but at no place is such certification expressly called for. The only enumeration of children of school age is that provided for in Section 164.030, RSMo, Cum. Supp. 1953. It is to be noted that the directives with regard to the certification of the enumeration of children, other than the deaf and dumb and the blind, stop with the county clerk. There is no express provision for the certification of the enumeration lists by the county clerk to the commissioner of education.

Yet, if the commissioner of education is to supply the information by way of a certification of the enumeration lists which will form the basis for the apportionment of this fund, he must receive the information from some source. This hiatus in the law has been overcome by a construction of Section 160.090, RSMo 1949, Subsection 2, Subsection (4) of which provides that the State Board of Education shall "Require of county clerks * * * copies of all records by them required to be made, and all such other information in relation to the funds and condition of schools and the management

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thereof as may be deemed necessary." By virtue of this section the State Board of Education annually requires the county clerk to submit a report showing an abstract of the enumeration lists of his county.

These enumeration lists are required by the Department of Education to be submitted by the 31st day of July. This gives ample time after receipt of the lists by the county clerk for him to certify the abstract of such list to the State Board of Education. In the normal course of events, then, the apportionment of the County Foreign Insurance Tax Fund required to be made by the comptroller by October 1 would be on the basis of the enumeration for that year certified by the commissioner of education sometime after July 31.

Biennially, in anticipation of the amount to be realized for the next biennial period from this source of revenue, the Legislature appropriates a fixed amount from the state treasury to be apportioned according to law, i.e., Sections 148.360, 170.220, supra, etc. The amount appropriated may be more or less than the amount actually received. In the 1953 Session, 67th General Assembly, Laws of Missouri, 1953, Section 3.180, page 47, the appropriation was worded thus:

"There is hereby appropriated out of the state treasury, chargeable to the County Foreign Insurance Tax Fund, the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), or so much thereof as may be available, to be apportioned among the several counties of the state and the city of St. Louis, as provided by law; for the period beginning July 1, 1953 and ending June 30, 1955." (Emphasis supplied.)

As a matter of fact, the amount received from this source in 1954 exceeded the balance remaining within the appropriation limits, so that in 1955 the 68th General Assembly, by House Bill No. 11, approved by the Governor on May 6, 1955, appropriated out of the state treasury the amount remaining chargeable to this fund. Section 16 of House Bill No. 11, 68th General Assembly, reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the County Foreign Insurance Tax Fund, the sum of One Million Two Hundred Twenty-four Thousand Four Hundred Sixteen Dollars and Seventy-one Cents (\$1,224,416.71), or so much

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thereof as may be available, to be apportioned among the several counties of the state and the city of St. Louis, as provided by law, for the period ending June 30, 1955.

"The foregoing amount is in addition to the amount appropriated for a similar purpose for the 1953-55 biennial period as set out in Section 3.180 of House Bill No. 325, an Act of the 67th General Assembly."

In making this supplemental appropriation the Legislature made it clear that it was a part of the appropriation previously made for the biennium beginning July 1, 1953, and ending June 30, 1955. It constituted a part of the funds which should have been apportioned to the several counties and the city of St. Louis by October 1, 1954, but which, because of inadequate appropriation, could not be so apportioned until this supplemental appropriation was made.

When Section 148.360 refers to "the last enumeration" as the basis for the apportionment by the comptroller, it clearly refers to the last enumeration certified to him by the commissioner of education. Since, at the time this supplemental apportionment was made, the last enumeration certified to the comptroller was that for the year 1954, the apportionment to the counties had to be made on that basis. Section 170.220 requires the county clerk to apply the same ratio used by the state auditor (comptroller) in making the distribution, and there is no authority for the county clerk to use any other ratio. Therefore, "the last enumeration" referred to in that section must also mean the last enumeration certified to the comptroller by the commissioner of education on which the apportionment to the counties was based.

Normally, of course, if the entire apportionment were made by October 1, the last enumeration certified by the commissioner of education to the comptroller would be the same as the last enumeration taken in the various districts. It is only in this unusual circumstance created by the time element that this divergence appears.

It must be borne in mind that apportionments of state aid based upon enumeration are not and cannot be on a current basis. In this case the enumerations are made between April 30 and May 15, while the apportionment normally is not made until October 1. Changes in the number of children between the ages

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of six and twenty resident in the district could well occur in this period. Yet, there is no doubt but that the apportionment is made on the basis of the number resident in the district at the time the enumeration was made. Since this money received by the counties in July, 1955, was actually but a part of that which should have been and would have been apportioned to them on October 1, 1954, there is no inequity in using the 1954 enumeration as a basis of the apportionment. The change in the enumeration of Reorganized School District R-3 brought about by the boundary change of April 5, 1955, will be reflected in the apportionment to be made in October, 1955.

We are, therefore, of the opinion that the comptroller properly used the 1954 enumeration certified to him by the commissioner of education as the basis of his apportionment to the counties and that the county clerk of Washington County should also have used the 1954 enumeration in making his apportionment to the various districts of Washington County.

With regard to your further question concerning the means to be followed in correcting the error, we are enclosing a copy of an opinion directed to Honorable George Henry, Prosecuting Attorney of Newton County, under date of July 27, 1954. The conclusion of that opinion as applicable to this situation is that District R-3 could sue the other districts of the county for the funds which they received which should properly have been apportioned to it, provided the money has not been spent for school purposes by the district receiving it. There is no indication in your letter, however, that the other districts would not be willing to refund this money voluntarily without the necessity of legal action. If that is the case, we perceive no reason why the county clerk could not recompute the amounts due each district on the basis of the 1954 enumeration, using the ratio used by the state comptroller in apportioning the funds to the county. Then, the county court can order the county treasurer to make the proper correction on his books for the districts for which he acts as treasurer and request the other districts to return to the county treasurer the amount of the overpayment. When the funds are returned, the county court can then issue its warrant to the treasurer of District R-3 for the additional amount properly due it.

CONCLUSION

It is the opinion of this office that the supplemental apportionment of the County Foreign Insurance Tax Fund received by Washington County in July, 1955, should have been apportioned

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by the county clerk of Washington County to the various districts of the county on the basis of the 1954 enumeration, using the ratio used by the state comptroller in making the apportionment to the counties.

It is the further opinion of this office that Reorganized School District R-3 of Washington County which received less of this apportionment than it properly should have may sue the other districts of the county which received more than they should have and recover the excess, provided it has not already been spent for school purposes by the district receiving it, or the error may be corrected voluntarily by the co-operation of all the officers and agencies concerned in the manner set forth in the body of this opinion.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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