

SCHOOLS:
SCHOOL DISTRICTS:
TAXATION:
STATE TAX COMMISSION:

School district may appear before State Tax Commission at hearing on appeal of assessment and may employ expert witnesses for such purpose.

December 15, 1959



Honorable Raymond R. Roberts
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Sir:

This is in response to your request for opinion dated November 24, 1959, which reads as follows:

"Request is hereby made for an opinion concerning the following questions:

1. Is it proper for a school board affected by values therein considered to intervene as a party and interest in an appeal from a county Board of Equalization to the State Tax Commission concerning intra-county valuations on real estate?
2. If it is proper for an interested school district to so intervene, is it proper for the school board to make necessary expenditures for the use of expert witnesses?"

The procedure for appealing from a decision of the county board of equalization is set forth in Chapter 138, RSMo. Particularly, Section 138.430(2), RSMo 1949, provides:

"2. Every owner of real property or tangible personal property and every merchant and manufacturer shall have the right of appeal from the local boards of equalization under rules prescribed by the state tax commission.

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Said commission shall investigate all such appeals and shall correct any assessment which is shown to be unlawful, unfair, improper, arbitrary or capricious."

Section 138.470, RSMo, C.S. 1957, in providing for the hearing before the Commission, also provides that "all persons affected, or liable to be affected by review of said assessments thus provided for, may appear and be heard at said hearing."

A school district being a body politic and a public corporation, is a "person" within the meaning of the statutes. Section 1.020(7), RSMo, C.S. 1957; School Dist. of Oakland v. School Dist. of Joplin, 340 Mo. 779, 102 SW2d 909; Kansas City v. School Dist. of Kansas City, 356 Mo. 364, 201 SW2d 930, 933. It certainly is "liable to be affected" by review of assessments because the review will determine whether the school district will receive more or less revenue. See School Dist. No. 24 of St. Louis County v. Neaf et al., 347 Mo. 700, 148 SW2d 554. Consequently, we are of the opinion that a school district may appear and be heard in an appeal to the State Tax Commission under Section 138.430, RSMo 1949.

School districts are creatures of statute and have such powers as are expressly conferred upon them by statute, but they also have such power as arises by necessary implication from those expressly conferred. State v. Kessler, 136 Mo. App. 236, 117 SW 85; Wright v. Board of Education of St. Louis, 295 Mo. 466, 476, 246 SW 43; 56 C.J., School and School Districts, page 193, Section 46, page 294, Section 152, page 331, Section 202. By statute, school districts, expressly, have been granted the power to sue and be sued. Section 165.263, RSMo 1949.

Although we have found no Missouri cases squarely on the point, the law generally is set out in 79 C.J.S., School and School Districts, page 316, Section 428(b):

"The capacity to sue or be sued carries with it all powers that are ordinarily incident to the prosecution or defense of a suit at law or in equity * * *."

It is apparently common practice for the taxpayer to employ expert witnesses in actions of this nature, and we perceive no reason why the political subdivision appearing before the Tax Commission for the purpose of protecting its revenue should be

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in any different position. If the employment of an expert witness is reasonably necessary to the presentation of the school district's case before the Commission, we are of the opinion that it may do so.

CONCLUSION

It is the opinion of this office that a school district liable to be affected by review of a tax assessment may appear before the State Tax Commission and be heard thereon. We are of the further opinion that if it is reasonably necessary for the presentation of the school district's case at such hearing, the school district may employ and present the testimony of expert witnesses.

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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