

SCHOOLS: Under Section 9226 only majority vote is required to put into effect proposition solely for purpose of repairing and furnishing school

May 8, 1936

5-11

Mr. L. H. Coward, Superintendent
Department of Public Schools
Greene County
Springfield, Missouri



Dear Sir:

We acknowledge receipt of your request for an official opinion under date of April 15, 1936, which reads as follows:

"Questions have arisen here time after time and especially since the annual school meeting this year concerning the interpretation of Sec. 9226, as to its implication for voting purely a repair and furnishing fund. Therefore, we wish to know if a district at its annual meeting votes a 'building fund,' under which heading it has to be submitted each year to the County Clerk on a form designated 'Estimate,' solely for repair and furnishing should be voted by a majority or by a two third majority. It seems the first part of Sec. 9226 indicates a two third majority while the latter part or the 'Provided' indicates only a majority.

"An immediate opinion will be appreciated as it is important we secure this information."

Section 10797, Revised Statutes Missouri 1909, as enacted, was in substance the same as what is now known as Section 9226, Revised Statutes Missouri 1929, prior to the enactment of several amendments thereto.

This section provides as follows:

"The board of education or directors of any school district in this state shall, whenever in their judgment it becomes necessary, or they be requested, by a petition of ten taxpayers of any such school district, to increase the annual rate of taxation for the purpose of paying for school building sites, whether the same have been purchased or condemned, for buying or erecting school buildings in such districts, or repairing or furnishing such buildings, determine the rate of taxation necessary to be levied within the maximum rates prescribed by the Constitution, and as therein limited for such purposes, and shall submit to the voters of such school district, at an election to be by such board called and held for that purpose, at the usual place for holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board for any of the purposes mentioned in this section, due notice having been given as required by Section 10844, and if two-thirds of the qualified voters of such school district shall vote in favor of such increase for the purpose aforesaid, the result of such vote, and the rate of taxation so voted, shall be certified by the secretary or clerk of such board to the clerk of the county court of the proper county, who shall, on the receipt thereof, proceed to assess the amount so returned for any or all of the purposes mentioned in this section on all the taxable property both real and personal, of such school

district, as shown by the last annual assessment for state and county purposes, including all statements of merchants, as is provided by law. (R. S. 1899, Sec. 9778, amended, Laws 1909, p. 770.)"

This section was amended by the General Assembly in 1911 as shown on page 397, Laws 1911, by inserting the following words "or of such city, town or village forming a school district, voting at said election," after the word "district" and before the word "shall" in line fifteen.

This Act of 1911 was later amended in 1917 as found on pages 501-2, by inserting the word "building" in line seven after the following words: "or for building, repairing and maintaining bridges over running streams."

This Act was further amended in 1919 as shown on page 699, Laws of 1919, by adding at the close of said section the following words:

"Provided: That when the proposition to be voted on refers only to repairing or furnishing, or both repairing and furnishing such school building, the proposition shall be deemed to have been carried at the election if a majority of the votes cast are cast in favor of the proposition."

By comparison the law now known as Section 9226, Revised Statutes Missouri 1929, is the same as amended in 1919, and provides:

" The board of education or directors of any school district in this state shall, whenever in their judgment it becomes necessary, or they be requested, by a petition of ten taxpayers of any such school district, to increase the annual rate of taxation for the purpose of paying for school building sites, whether the same have been purchased or condemned, for buying or erecting school buildings in such districts, or repairing or furnishing such buildings,*(or

for building, repairing and maintaining foot bridges over running streams) determine the rate of taxation necessary to be levied within the maximum rates prescribed by the Constitution, and as therein limited for such purposes, and shall submit to the voters of such school district, at an election to be by such board called and held for that purpose, at the usual place for holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board for any of the purposes mentioned in this section, due notice having been given as required by section 9283, and if two-thirds of the qualified voters of such school district *(or of such city, town or village forming a school district, voting at said election), shall vote in favor of such increase for the purposes aforesaid, the result of such vote, and the rate of taxation so voted, shall be certified by the secretary or clerk of such board to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess the amount so returned for any or all of the purposes mentioned in this section on all the taxable property, both real and personal, of such school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants, as is provided by law: *(Provided, that when the proposition to be voted on refers only to repairing or furnishing, or both repairing and furnishing such school building, the proposition shall be deemed to have been carried at the election if a majority of the votes cast are cast in favor of the proposition.) (R.S. 1919, sec. 11152.) "

The fundamental rule in the construction of a statutory provision is to ascertain the legislative intent expressed ~~herein~~. State ex rel. Consolidated School District Number 1 v. Hackmann 258 S. W. 1011; 302 Mo. 558.

The last amendment provides that a majority of votes is sufficient to carry an election when the proposition to be voted upon refers to repairing and furnishing a school building. This amendment impliedly repealed the former statute enacted only insofar as pertaining to the required number of voters required to carry a proposition relative to repairing and furnishing a school building.

It is a fundamental rule of construction that a new statute is amendatory and repeals a whole one by implication only to the extent of the irreconcilable repugnancy between the two. State ex rel. Holladay v. Rinke, 121 S. W. 159.

Section 9284, Revised Statutes Missouri 1929, fortifies this contention as found in subdivision 9, which reads as follows:

"The qualified voters assembled at the annual meeting, when not otherwise provided, shall have power by a majority of the votes case. * * * * To determine, by ballot, the rate to be levied upon the one hundred dollars' assessed valuation necessary to purchase a site, erect a school-house thereon and furnish the same, as provided for in section 9226. * * * * "

In Jacobs v. Cauthorn 293 Mo. 154, l. c. 158-9, the Court said:

"As will appear from the foregoing statement the chief complaint of appellants in their bill was directed against the '25 cents building and repair fund,' and mainly on account of the manner of authorization. Their complaint that the proposition should have been supported by a petition of ten taxpayers of the district

is not tenable, as Section 11152, Revised Statutes 1919, specifically grants to the board of directors the right, when such board deems it necessary, to submit the question of increase of the annual rate of taxation for repairing and furnishing school buildings, and the same section permits said increase for those purposes upon a vote of a majority of those qualified voters casting their votes on the proposition. The notice of said election and the ballots used sufficiently comply with the law as it does not appear that any one participating in said meeting was deceived by said notice or confused in the matter of casting an intelligent ballot. This contention must be ruled adversely to appellants, and we also hold that the board of directors reasonably submitted its estimate to the county clerk."

Section 11152, Revised Statutes Missouri 1919, is the law as amended in 1919 and now known as Section 9226, Revised Statutes Missouri 1929.

CONCLUSION

From the foregoing, it is the opinion of this department that only the majority of the qualified voters of a school district are required to carry a proposition solely for the purpose of repairing and furnishing a

Mr. L. H. Coward

-7-

May 11, 1936

school building.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

ARH:
OWN:LC