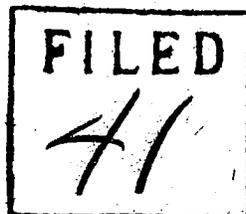


SCHOOLS)

TAXATION)

Levy applicable when election approving excess is declared void is maximum permitted under constitution without election. Taxpayers who tender legal tax not liable for penalty.

May 16, 1950



Honorable W. H. Holmes
State Auditor
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Please furnish this department with an official opinion based on the following statement of facts:

"A special election was held on June 30, 1948, by School District No. 72 in Mercer County. At that time a levy of \$2.00 was voted, which is \$1.35 in excess of the regular levy of \$.65. The \$2.00 levy has been held by the Kansas City Court of Appeals to be null and void, because the election was illegally held.

"Certain taxpayers did not pay any of the 1948 tax; however, they offered to pay to the township collector, while the taxes were current, all of the tax except the school tax, which the township collector would not accept. Due to this fact the delinquent taxpayers contend that they should not be charged with penalties.

"The questions are:

"(1) In as much as the \$2.00 levy has been held to be illegal, what school tax, if any, should be collected from the taxpayers?

Honorable W. H. Holmes

"(2) Are the taxpayers liable for the penalties provided by law for delinquent taxes?"

Section 10358, Laws of 1945, page 1629, provides:

"Whenever it shall become necessary, in the judgment of the board of directors or board of education of any school district in this state, to increase the annual rate of taxation, authorized by the constitution for district purposes without voter approval, or when a number of the qualified voters of the district equal to ten per cent or more of the number casting their votes for the directors of the School Board at the last school election in said district shall petition the board, in writing, for an increase of said rate, such board shall determine the rate of taxation necessary to be levied in excess of said authorized rate, and the purpose or purposes for which such increase is required, specifying separately the rate of increase required for each purpose, and the number of years, not in excess of four, for which each proposed excess rate is to be effective, and shall submit to the qualified voters of the district, at the annual school meeting or election, or at a special meeting or election called and held for that purpose, at the usual place or places of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board, due notice having been given as required by Section 10418; and if two-thirds of the qualified voters voting thereon shall favor the proposed increase for any purpose, the result of such vote, including the rate of taxation so voted in such district for each purpose, and the number of years said rate is to be effective, shall be certified by the clerk or secretary of such board or district to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all taxable property, 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 provided by law."

Honorable W. H. Holmes

Section 11(b) of Article X, Constitution of Missouri, 1945, limits the rate of taxation in school districts, such as that here involved, to sixty-five cents on the hundred dollars assessed valuation in the absence of approval by the voters.

Inasmuch as the election to approve the increased rate was void, the status of certification of the rate to the county clerk is the same as if no election had been held. In the case of Kansas City, Fort Scott & Memphis Railroad Company v. Chapin, 162 Mo. 409, the question of application of a rate in excess of that authorized without approval of the voters was considered. The court in its opinion stated (162 Mo., l. c. 415):

"The estimates which the school board are required to forward to the county clerk by section 9771, (Section 10347, R.S. Mo. 1939) certified by the district clerk, in case of an increase, by vote of the taxpayers of the annual rate, beyond forty cents, as required by Section 9777, (Section 10358, R.S. Mo. 1939) are the only authority given by law to the county clerk to 'assess and carry out' such increase as a tax on the property of the citizen. Without such authority he had no power to thus levy such increase as a tax upon defendant's property as was done in the districts mentioned. To that extent these school taxes were excessive, without authority of law, and void, and the defendant should have been relieved to the extent of such excess."

(Underscoring ours.)

Such rule should, we feel, be applicable in this situation. The attempted increase having been declared void, the only school tax which should be permitted to stand is the limit which might have been levied without voter approval, and which in this case is sixty-five cents on the hundred dollars assessed valuation.

As for your second question, the law is well settled that the collector may not accept only a portion of taxes owed by a taxpayer. In the case of State ex rel. Stone v. Kansas City, Fort Worth & Memphis Railroad Company, 178 S.W. 444, the court stated:

" * * * We know of no law requiring the collector to accept a part of the taxes under the circumstances of this case. The collector's

Honorable W. H. Holmes

refusal to accept the amount tendered did not result in relieving defendant of the payment of the penalty on the amount tendered."

Inasmuch as under the laws of this state, the collector may not accept a portion of taxes due, we feel that, insofar as the matter of penalty is concerned, the rule applicable is that, the taxpayer having had no opportunity to pay the portion of the tax which he conceded to be due, the penalty will not attach. In the case of Redwood County v. Winona and St. Paul Land Company, 40 Minn. 515, 42 N. W. 473, the court held that where part of a tax was illegal and the taxpayer had no opportunity to pay the legal part alone and successfully defended against the illegal part, no penalty for any part of the tax should be imposed upon it. The court held that the penalty for non-payment of the tax could not be imposed until the person has had an opportunity to pay the tax and failed to do so.

Under the circumstances of this case the taxpayers having tendered the amount legally due and the collector having been unable under the law to accept that amount, we are of the opinion that the penalty should not attach.

CONCLUSION

Therefore, it is the opinion of this department that when a levy is voted by a school district in excess of the constitutional limit, and the election approving the levy is subsequently held void, school tax should be collected at the maximum rate permitted in the district under Section 11(b), Article X, Constitution of Missouri, 1945, which, in the case of school districts not formed of cities and towns, is sixty-five cents on the hundred dollars assessed valuation.

We are further of the opinion that taxpayers who tendered to the township collector while the taxes were current all of the tax except the school tax which the township collector would not and could not accept are not liable for penalties on the taxes so tendered where the levy for the school tax has been declared illegal and void.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN
Assistant Attorney General

J. E. TAYLOR
Attorney General

RRW/feh