

CONSTITUTIONAL LAW: Section 11, Article X of the Constitution as amended, provides two methods of increasing school tax levy above constitutional limit. Information to be on
SCHOOLS: ballots used in elections for tax levy increase should include rate, purpose
TAXATION: and period of levy.
ELECTIONS:

March 8, 1951

Honorable Hubert Wheeler
Commissioner of Education
Capitol Building
Jefferson City, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"Each year before the annual school elections in April many inquiries come to this department concerning the form of official ballot that may be used for the authorization, by the voters of the district, of school tax levies when such levies are in excess of the tax rate that may be authorized by the Board of Education without voter approval.

"Section 165.110, R.S. 1949 (10366 A.L. 1949, page 585) sets out by funds the purposes for which school moneys may be raised and disbursed. The treasurer of each school district is authorized and required to set up six funds for the accounting of all school moneys: Incidental Fund, Teachers Fund, Free Textbook Fund, Building Fund, Sinking Fund and Interest Fund. The patrons of any school district are authorized to vote an additional levy for three of the established fund accounts, namely, Teachers Fund, Incidental Fund and Building Fund.

"Section 11, Article 10, of the Missouri Constitution, as amended, sets the basic levy for school districts which may not

Honorable Hubert Wheeler

be exceeded by Boards of Education. This law further provides that school districts may increase the rate of taxation for their respective purposes when the rate and the purpose of the increase are submitted to the qualified electors who shall favor by the required vote therefor.

"Boards of Education find difficulty in phrasing the wording when submitting propositions for authorizing additional tax levies that can readily be understood by the voters and at the same time comply with the provisions of the law. A lack of uniformity exists throughout the state when such tax levy propositions are submitted to the voters.

"Last year the Board of Education of a town school district submitted a proposition, which seemed to be rather specific and clear for voter interpretation, to the voters for the purpose of authorizing an additional levy as follows:

"To vote a levy of \$1.00 on the one-hundred dollars assessed valuation for incidental purposes in addition to the \$1.00 on the one-hundred dollars assessed valuation that may be levied by the Board of Education without voter approval. (This makes a total levy of \$2.00 for teacher and incidental purposes which is the same as the present levy.)

"Note to voters: To cast a vote in favor of the levy, place a cross (X) mark in the square opposite the words "for the levy"; to vote against the levy, place a cross (X) mark in the square opposite the words "against the levy."

FOR the Levy

AGAINST the Levy'

Honorable Hubert Wheeler

"The foregoing proposition contains a proposal for the approval of an additional tax rate for only one purpose, namely, incidentals. In some districts it may be necessary to authorize additional levies for the Teachers Fund or the Building Fund. Since there is lack of uniformity in submitting tax levy propositions and many inquiries are being made about the proper form of tax levy propositions to be submitted, I shall be glad to have your advice and official opinion in regard to the following questions:

"1. Does the foregoing proposition for the authorization of additional levy, which was submitted by a town school district, come within the legal provisions of the constitutional requirements for authorizing such tax levy? If it should fail to meet legal requirements, what modification would be necessary to make it a valid proposition?

"2. If the Board of Education found it necessary to submit a proposition for authorizing additional levies for more than one purpose, such as incidental purposes and teachers fund purposes, would a single proposition for both purposes be valid if submitted in the following form?

"To vote a levy of 50 cents on the one-hundred dollars assessed valuation for incidental purposes, and 50 cents on the one-hundred dollars assessed valuation for the teachers fund purposes; said levies to be in addition to the \$1.00 on the one-hundred dollars assessed valuation that may be levied by the Board of Education without voter approval."

Generally, the questions which you have asked relate to the manner in which a proposition for a school tax levy above the constitutional limit should be submitted to the voters on the official ballot on which they would cast their votes in favor of or against said levy.

Honorable Hubert Wheeler

Section 11, Article X of the Constitution of Missouri, 1945, provided, among other things, for school districts increasing the rates of taxation above the constitutional limitation. At the general election held the first Tuesday in November, 1950, Amendment No. 1 (Laws of Missouri, 1949, page 642) was voted on by the qualified voters of Missouri, and was adopted. This amendment repealed Section 11, Article X of the Constitution, and enacted in lieu thereof a new section under the same section number and relating to the same subject, which, in part, provides:

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

* * * * *

"For school districts formed of cities and towns - one dollar on the hundred dollars assessed valuation, except that in the City of St. Louis the annual rate shall not exceed eighty-nine cents on the hundred dollars assessed valuation;

"For all other school districts - sixty-five cents on the hundred dollars assessed valuation.

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed one year, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided in school districts in cities of 75,000 inhabitants or over the rate of taxation as herein limited may be increased for school purposes so that the total levy shall

Honorable Hubert Wheeler

not exceed three times the limit herein specified and not to exceed two years, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; * * *"

In reading the above constitutional provision it appears that there are now two methods by which a school tax levy may be increased above the constitutional limit. First, by a two-thirds vote of the qualified voters voting in favor thereof any amount of tax may be levied for a school purpose for a period not to exceed four years, and, second, by a majority vote of the qualified voters voting in favor thereof a tax may be levied for school taxes not to exceed three times the constitutional limit and for a period not to exceed one year, and in school districts in cities of 75,000 inhabitants or over for a period of two years.

You desire to know what information should be given to the qualified voters when a proposition to increase a school tax levy above the constitutional limit is submitted.

Section 165.080, R.S. Mo. 1949, as amended by Senate Bill No. 5, enacted by the 66th General Assembly with an emergency clause, and now in effect, was passed to implement the provisions of Section 11, Article X of the Constitution, as amended, and provides as follows:

"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

Honorable Hubert Wheeler

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 165.200; and if the necessary majority of the qualified voters voting thereon, as required by article X, section 11 of the constitution, 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."

Also, Section 165.487, R.S. Mo. 1949, as amended by Senate Bill No. 6, enacted by the 66th General Assembly with an emergency clause, and now in effect, was passed to implement Section 11, Article X of the Constitution, with reference to increasing the school tax levy in school districts in cities of 75,000 inhabitants or more.

Reading the above-quoted section, and Section 11, Article X of the Constitution, as hereinbefore quoted, it appears that the voters, when the proposition to increase the school tax levy above the constitutional limit is submitted, should be informed of the rate of the tax to be levied, the purpose or purposes for which such increase is required, specifying separately the rate of increase required for each purpose, if there is more than one purpose, and the number of years for which the tax is to be levied.

Honorable Hubert Wheeler

The period over which the tax levy is to extend should be included for it is an important factor which may determine the amount of vote required. For example, a tax levy for a particular school purpose in the amount of one dollar above the constitutional limit to be levied for only a period of one year would only require a majority vote, whereas the same tax rate to be levied for a period of three years would require a two-thirds vote.

The purpose, such as you have designated in the example used in your letter, must be included and, of course, it must definitely be a school purpose.

In the case of *Jacobos et al. v. Cauthorn et al.*, 293 Mo. 154, 238 S.W. 443, a proposition to increase the tax levy to one dollar and twenty-five cents, of which twenty-five cents thereof (and stated on the ballot) was voted for "building and repair fund." The court, in holding the tax levy excessive and invalid, said at S.W. l.c. 445:

"The purpose for which said increase was voted was, not to erect a school building, but such increase, as stated in the notice and on the ballots, was for 'building and repair fund.' If the voters of the district had intended to erect a school building, then it would have been legitimate to vote an increase beyond the maximum fixed by the Constitution; but in such case, both under the Constitution and by statute, it would have been necessary for a submission of that question to the voters, and an authorization by two-thirds of the qualified voters present and voting on said proposition. * * *"

From the above case it is apparent that information to be given on the ballot when the proposition of an increased tax levy is submitted to the voters must include a proper school purpose for which the increased tax levy is required.

In *State ex rel. Thorp v. Phipps*, 148 Mo. 31, the information given to the voters voting on a tax levy for more than one school purpose was as follows, l.c. 34:

"* * * * to vote on a proposition to levy 100 cents on the \$100 assessed valuation of the district for school purposes; 85

Honorable Hubert Wheeler

cents of said 100 cents to be applied for
teachers' fund and 15 cents of said 100
cents to be applied for incidental fund.
* * *"

In view of the foregoing authorities and what we have heretofore said, we believe, in answer to your first question, that your sample proposition is correct and proper, except that it should include the period for which the rate of tax is to be levied. While we do not believe it is necessary to comply with the statutory and constitutional requirements, it would be well to also include on the ballot a statement of the amount of vote required for the adoption of the proposition. That is to say, a majority or two-thirds vote of the qualified voters voting in favor thereof, whichever the case may be.

In answer to your second question we conclude that the inclusion of more than one purpose, when the proposition is submitted as contained in your sample, would be proper, subject, however, to the exceptions as noted in answer to your first question.

CONCLUSION

It is therefore the opinion of this department that, when a proposition is submitted to the qualified voters of a school district to increase a tax levy for school purposes above the constitutional limit, the information to voters printed on the ballot should include the rate of the proposed tax levy, the school purpose or purposes for which it is required and the period for which the rate of tax is to be levied. As a suggestion, it would also be proper to include a statement of the amount of vote required for the adoption of the proposition.

Respectfully submitted,

APPROVED:



J. E. TAYLOR
Attorney General

RICHARD F. THOMPSON
Assistant Attorney General

RFT:ml