

SCHOOL DISTRICTS: (1) Board of directors may certify amended
TAXATION: estimate under Sec. 165.077, RSMo 1949,
LEVY: at any time prior to action being taken
upon original estimate and (2) such re-
certification is discretionary with board
of directors.



May 4, 1955

Honorable Herbert C. Funke
St. Louis County Counselor
St. Louis County Courthouse
Clayton, Missouri

Dear Sir:

Reference is made to your request for an official
opinion of this department reading as follows:

"I would like to have your opinion as
soon as possible regarding the re-cer-
tifying of a school tax levy after May
15th.

"Section 165.077, RSMo 1949, states:

"The board of directors of each school
district shall, on or before the fifteenth
day of May of each year, forward to the
county superintendent of schools an esti-
mate of the amount of money to be raised
by taxation for the ensuing school year,
and the rate required to produce said
amount, specifying by funds the amount
and rate necessary to sustain the school
or schools of the district for the time
required by law * * *."

"The specific questions I would like your
opinion on are as follows:

"(1) In the event the board of directors
of a school district discovers on about
the First of August that the assessed
valuation of the school district has in-
creased by fifty percent (50%) over the
amount that it was on May 15th, when the

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estimate was filed, does the board of directors have authority to re-certify a lower rate than they did on May 15th?

"(2) Is it the duty of the board of directors upon the discovery of the increased valuation, to revise their estimate after May 15th, and certify a levy that will produce the same amount of revenue that the levy certified on May 15th would have produced?"

At the outset we wish to direct your attention to a portion of Section 165.150, RSMo 1949, relating specifically to first class high school districts in counties of the first class. Inasmuch as St. Louis County is one falling within such class, the statute is applicable to first class high school districts therein. The portion of the statute referred to reads as follows:

"In all counties of the first class, the qualified voters in any first class high school district may, at any annual meeting provided by law, vote a rate of taxation for school purposes in accordance with the provisions of the constitution of this state, and said rate of taxation for school purposes thus voted shall be authorized and established for the next ensuing four years, unless within said period such rate is changed in like manner, provided that such rate may be decreased by the board of education, without calling an election. * * * * *

It is readily apparent that the statutory authority therein conferred upon the board of directors of such districts is entirely adequate to authorize necessary adjustments in the levy estimated to be required to produce the funds required.

As generally applicable to all school districts, we find Section 165.077, RSMo 1949, which you have quoted in your letter and which for the sake of brevity we will not re-quote.

In construing this statute, the Supreme Court in State ex rel. v. Phipps, 49 S. W. 865, 148 Mo. 31, upheld the propriety

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of withdrawing an estimate previously made, and sustained the validity of a tax based upon one substituted for such original estimate. This principle was reaffirmed by the same court in *Lyons v. School District of Joplin et al.*, 311 Mo. 349, 278 S. W. 74, from which we quote, 1. c. 78:

"* * * * * The estimate filed under the provisions of section 11142 (now section 165.077, RSMo 1949) may be withdrawn, and revised estimates may be substituted, if done before the first estimates were acted upon, and a valid levy may be made upon such revised estimates. State ex rel. v. Phipps, 148 Mo. 31, 49 S. W. 865."

The foregoing clearly discloses to us that in the event of substantial changes occurring in the valuation of the property within a school district, subsequent to the filing of the original estimate, an amended estimate may thereupon be filed, provided that such action is taken prior to the original estimate having been acted upon. Parenthetically, we observe that the widespread publicity now being given to the action taken by the State Tax Commission looking toward the equalization of property valuations in numerous counties, including St. Louis County, will no doubt bring to the attention of the agency charged with the duty of actually making the levy the necessity of deferring action thereon until possible amended estimates may be filed.

We do not offer any comment upon the second question which you have proposed, inasmuch as the power to file such amended estimates is discretionary with the various school boards affected.

CONCLUSION

In the premises we are of the opinion that a board of directors may file an amended estimate under the provisions of Section 165.077, RSMo 1949, at any time prior to the original estimate filed thereunder having been acted upon by the body imposing the levy required thereunder.

We are further of the opinion that such boards of such school districts are not required to file such amended estimates by reason of changed circumstances arising from increased valuation of property within such school districts.

Honorable Herbert C. Funke

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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