

SCHOOLS:
JUNIOR COLLEGE DISTRICTS:
CONSTITUTIONAL LAW:

1. The amendments to Section 11(c) of Article X of the Missouri Constitution adopted by the voters on November 3, 1970, apply to junior college districts organized under Sections 178.770 through 178.890, RSMo 1969. 2. Pursuant to Section 11(c) of Article X of the Missouri Constitution, the tax rate for school purposes approved by the voters of a junior college district in 1970 will apply in 1971 (a) provided the board of trustees of the district does not propose a higher tax rate for 1971, and does not levy a lower tax rate for 1971 than that approved by the voters for 1970, or (b) if the board of trustees proposes a higher tax rate for 1971 than that approved by the voters for 1970, and the proposal is defeated by the qualified voters of the district.

OPINION NO. 58

January 8, 1971

Honorable William C. Phelps
State Representative
Fourth District
5016 Grand
Kansas City, Missouri 64112



Dear Representative Phelps:

This is in response to your request for an opinion from this office with regard to the following inquiry:

"I urgently need and request an opinion from your office on the following questions which relate to Section 11(c) of Article X of the Constitution of Missouri as enacted at the General Election on Tuesday, November 3, 1970:

"1. Do the provisions of the recently enacted Section 11(c) of Article X of the Constitution of Missouri, insofar as they relate to school districts, apply to junior college districts organized under the Missouri statutes now desig-

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nated as Sections 178.770 through 178.890, R.S.Mo. 1969?

"2. If such a junior college district, pursuant to Section 178.870, R.S.Mo., 1969, and Chapter 164, R.S.Mo., 1969, increased its tax rate for school purposes for the year 1970 by voter approval above the limits provided in said Section 178.870, will such increased rate apply for 1971

"(a) provided the board of trustees of the district does not propose a higher tax rate for 1971 and does not levy a lower tax rate for 1971 than that approved by the voters for the year 1970, or

"(b) if the board of trustees of the district proposes a higher tax rate for school purposes for 1971 than that approved for the year 1970 and the proposal is defeated by the qualified voters in the district?"

In its entirety, Section 11(c) of Article X of the Missouri Constitution, which was approved by the voters at the General Election on November 3, 1970, and which became effective thirty days thereafter, reads as follows:

"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, except as herein provided, 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 seventy-five thousand inhabitants or over the rate of taxation as herein limited may be increased

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for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed two years, except as herein provided, 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, that in any school district where the board of education is not proposing a higher tax rate for school purposes, the last tax rate approved shall continue and the tax rate need not be submitted to the voters; provided, that in school districts where the qualified voters have voted against a proposed higher tax rate for school purposes, then the rate shall remain at the rate approved in the last previous school election except that the board of education shall be free to resubmit any higher tax rate at any time; provided that any board of education may levy a lower tax rate than approved by the voters as authorized by any provision of this section; and provided, that the rates herein fixed, and the amounts by which they may be increased may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

With reference to Question No. 1, Section 11(c) begins as follows: "In all . . . school districts the rates of taxation as herein limited may be increased. . . ." "As herein limited" refers to Section 11(b) which provides with regard to school districts as follows:

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

* * *

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"For school districts formed of cities and towns, including the school district of the city of St. Louis--one dollar and twenty-five cents on the hundred dollars assessed valuation;

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

We believe that "all other school districts" as used in Section 11(b) and "all . . . school districts" as used in the opening clause of Section 11(c) include junior college districts organized pursuant to Section 178.770 through 178.890, RSMo 1969. In Three Rivers Junior College District v. Statler, 421 S.W.2d 235 (Banc, 1967), the Supreme Court of Missouri had before it the question "whether the portions of Article X, Section 11(b) which refer to school districts, mean that each school district is authorized to levy the full amount stated, even though there may be more than one layer of school districts covering a given territory, or whether all the school districts in a given area combined must stay within the limits specified." Id. at 239. The Court concluded that each school district, including junior college districts, is authorized to levy the full amount stated in Article X, Section 11(b) unless, as is the case with junior colleges, the rates in Section 11(b) are further limited by law as provided in Section 11(c). In reaching this conclusion the Supreme Court assumed that junior college districts were "school districts" as that term is used in the last subparagraph of Section 11(b) and in Section 11(c):

". . . The language of Section 11(b) is not 'For school districts formed of cities and towns--collectively a total of one dollar and twenty-five cents' or 'For all other school districts collectively in the same county or area--a total of sixty-five cents'. The language simply is 'For school districts formed of cities and towns' and 'For all other school districts'. In our opinion this language does not prohibit the legislature from authorizing a junior college district overlying one or many local school districts to levy a separate tax as set forth in Sec. 178.870, *supra*, and we return to the basic principle mentioned earlier that the General Assembly, unless restrained by the constitution, is

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vested in its representative capacity with all the primary power of the people and that the legislature has the power to enact any law not prohibited by the federal or state constitution, see cases on page 3, supra. We therefore hold respondent was in error in holding that the 40 cents levy, when added to the other levies by other school districts in the respective counties and the junior college district, exceeds the constitutional limitation on levies by school districts prescribed by Section 11(b), Article X of the 1945 constitution. Whether the junior college district levy exceeds the constitutional limitation must be determined by the size of its levy alone." Id. at 242-243. (Emphasis supplied.)

Therefore, we conclude that junior college districts are "school districts" as that term is used in the last subparagraph of Section 11(b). Section 11(c) both before and after the amendment approved in November, 1970, begins with "In all. . . school districts. . . ." Consistent with the Three Rivers case this general language would include junior college districts. Is there anything in the language added to Section 11(c) by the voters at the general election on November 3, 1970, which would indicate an intention to restrict its coverage to school districts other than junior college districts? The added language is as follows:

". . . provided, that in any school district where the board of education is not proposing a higher tax rate for school purposes, the last tax rate approved shall continue and the tax rate need not be submitted to the voters; provided, that in school districts where the qualified voters have voted against a proposed higher tax rate for school purposes, then the rate shall remain at the rate approved in the last previous school election except that the board of education shall be free to resubmit any higher tax rate at any time; provided that any board of education may levy a lower tax rate than approved by the voters as authorized by any provision of this section; . . ." (Emphasis supplied.)

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The coverage of this amendment is not limited to particular school districts. We find nothing in the language of this amendment restricting its application to less than "all. . . school districts", including junior college districts.

Your second question inquires whether the board of trustees of a junior college could levy in 1971 the increased tax rate approved by the voters in 1970 under two different factual situations. The first factual situation, denoted (a) in your letter, assumes that the board of trustees of the district would not propose a higher rate for 1971 nor would the board levy a lower rate for 1971 than that approved by the voters for the year 1970. Pursuant to Section 11(c) of Article X as amended in November, 1970, the last tax rate approved by the voters would continue in 1971 under this factual situation. See Opinion No. 546, dated November 20, 1970, to Honorable Robert L. Prange, a copy of which is enclosed herewith.

In subparagraph (b) of your second question you request that we assume that the board of trustees of the district proposed a higher tax rate for 1971 than that approved by the voters for the year 1970, and the proposal was defeated by the qualified voters of the district. We believe that this question is answered by the following language of Section 11(c), Article X:

" . . . provided, that in school districts where the qualified voters have voted against a proposed higher tax rate for school purposes, then the rate shall remain at the rate approved in the last previous school election except that the board of education shall be free to re-submit any higher tax rate at any time; . . ."

CONCLUSION

It is the opinion of this office that:

1. The amendments to Section 11(c) of Article X of the Missouri Constitution adopted by the voters on November 3, 1970 apply to junior college districts organized under Sections 178.770 through 178.890, RSMo 1969.

2. Pursuant to Section 11(c) of Article X of the Missouri Constitution, the tax rate for school purposes approved by the voters of a junior college district in 1970 will apply in 1971 (a) provided the board of trustees of the district does not pro-

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pose a higher tax rate for 1971, and does not levy a lower tax rate for 1971 than that approved by the voters for 1970, or (b) if the board of trustees proposes a higher tax rate for 1971 than that approved by the voters for 1970, and the proposal is defeated by the qualified voters of the district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a prominent initial "J".

JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 546
11-20-70, Prange