

CONSTITUTIONAL LAW:
SCHOOLS:
BONDS:
TAXATION (SCHOOLS):

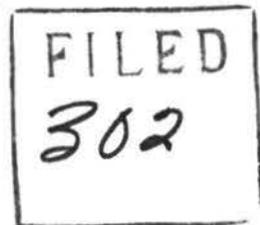
tion 11 (c) and Article VI, Section 26 (b) of the Missouri Constitution.

Neither the Missouri Constitution nor the United States Constitution forbids the two-thirds majority needed for tax and bond elections under Article X, Sec-

September 17, 1974

OPINION NO. 302

Dr. Arthur L. Mallory
Commissioner of Education
Jefferson Office Building
Jefferson City, Missouri 65101



Dear Dr. Mallory:

This letter is in response to your request for an opinion. In the request, you have asked the following questions:

"1. Is that provision of Section 11(c), Article X of the Missouri Constitution that requires certain tax rate proposals to receive a two-thirds majority vote to become effective in conflict with any other provision of the Missouri Constitution relating to this subject or any provision of the United States Constitution?"

"2. Is that provision of Section 26(b), Article VI of the Missouri Constitution that requires bond proposals to receive a two-thirds majority vote to authorize issuance of the bonds in conflict with any other provision of the Missouri Constitution or any provision of the United States Constitution?"

It is the opinion of this office that two recent cases concisely state the law as it concerns that part of your question dealing with the United States Constitution. Brenner v. School District of Kansas City, Missouri, 315 F.Supp. 627 (D.C.Mo. 1970), deals specifically with the Missouri provisions for bond and tax elections. That case holds:

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". . . that there is nothing in the Constitution or any of its Amendments which prohibits Missouri from establishing and maintaining its two thirds majority requirement for its school referendum elections." Id. at 642.

Gordon v. Lance, 403 U.S. 1, 91 S.Ct. 1889, 29 L.Ed.2d 273 (1971), also concerns the applicability of the United States Constitution to greater than majority requirements in a referendum election. Specifically, West Virginia's statute dealing with a sixty percent approval rate required for incurring bonded indebtedness or increasing tax rates was at issue. The Supreme Court held that the West Virginia law did not violate the one-man, one-vote rule of the Equal Protection Clause of the Fourteenth Amendment.

The Missouri Constitution, Article I, Section 2, states ". . . that all persons are created equal and are entitled to equal rights and opportunity under the law. . . ." There is no decisional law directly applying this provision to the tax and bond election requirements. However, King v. Swenson, 423 S.W.2d 699 (Mo.Banc 1968), states that "the general purpose of these federal and state provisions is to prevent invidious discrimination. Statutory classification does not violate constitutional limitation if all persons in the same class are treated with equality." Thus, the standards for the state are similar, if not the same, as those for the United States Constitution.

CONCLUSION

It is the opinion of this office that neither the Missouri Constitution nor the United States Constitution forbids the two-thirds majority needed for tax and bond elections under Article X, Section 11 (c) and Article VI, Section 26 (b) of the Missouri Constitution.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert H. House.

Very truly yours,



JOHN C. DANFORTH
Attorney General