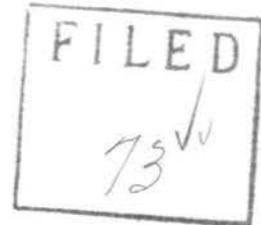


SCHOOL--
IN RE: Majority of TAX PAYERS voting at election under Sec. 9225
R. S. Mo. 1929, increasestax levy; and who is a tax-payer.

April 3rd, 1933



Hon. Walker Pierce,
Prosecuting Attorney,
Fayette, Missouri.

Dear Sir:-

Answering your letter of March 30th, relative to Section 11151 of the School Laws of 1927 (now Section 9225 R. S. Mo. 1929) which provides the majority of the qualified voters who are tax-payers may increase the tax levy for school purposes. The question has arisen as to whether or not liability for poll tax makes one a qualified voter within this section. If not, the further question arises as to whether or not the tax-payer must be liable for the taxes within the district in which he is voting.

That Section requires that,

" * * * if A MAJORITY OF THE VOTERS WHO ARE TAX-PAYERS VOTING AT SUCH ELECTION ON THE PROPOSITION TO INCREASE THE LEVY SHALL VOTE IN FAVOR OF SUCH INCREASE, the result of such vote and the rate of taxation so voted in such district shall be certified to the County Clerk * * * who shall on the receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all the 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."

Taxes on railroad property in the district would be taxable under this law.

You will note, the statute repeatedly said the majority of the tax-payers voting at such an election.

Black's Law Dictionary says that a tax-payer is defined as a person chargeable with a tax.

The St. Louis Court of Appeals defines a tax-payer as a person owning property in the State subject to taxation on which he regularly pays taxes. (This definition is adopted in Pope's Legal Definitions.) Sutton v. Fessie 71 S. W. (Mo.) 745.

In the following case the party seems to have owned an automobile and was considered a tax-payer, Castilo v. State Highway Department 312 Mo. 244, l.c. 262.

In other decisions, they have defined a tax as "an enforced contribution of money or property and in accordance with some reasonable rule of apportionment by authority of a sovereign state on a PERSON OR PROPERTY within its jurisdiction for the purpose of defraying the public expense."

Balentine's Law Dictionary p.1263
20 R.C.L. p. 13
23 R.C.L. p. 946

" 'THE LEGISLATURE MAKES, THE EXECUTIVE EXECUTES AND THE JUDICIARY CONSTRUES THE LAWS.' Cooley on Taxation p.34.

"Chief Justice Marshall in Wayman v. Southard 10 Wheat, 1, p. 46: 'The Legislature must therefore determine all questions of necessity, discretion or policy in ordering a tax and in apportioning it * * * and must decide upon the agencies by means of which collections shall be made.' "

Patton v. Brady 184 U.S. 608, l.c. 619, 621.

The last above cited opinion from the Supreme Court of the United States would indicate that a tax-payer is anyone who pays a tax on real estate, personal property, merchandise or whatnot; the conclusion would be inevitable, a man who pays poll tax (who helps keep the roads in shape for the children to go to and come from school) is a tax-payer.

Village of Nixa v. Wilson 199 Mo. Ap. 33
Castillo v. Highway 312 Mo. 244, supra.

The theory of the law is that a tax-payer's interest is so great that he will exercise his discretion in voting for the best interest of the district.

199 Mo. Ap. 33, l.c. 35, supra
See also Sections 7879-7886 (R. S. 1929) inclusive.

"No strict and technical construction is to be put upon the statute involved, nor is a strict and technical compliance with it to be exacted of the 'plain, honest, worthy citizens, not specially learned in the law' in the performance of their duties under it."

State ex rel. Jones 266 Mo. l.c. 201
State ex rel. Job. 205 Mo. l.c. 34.

"The laws affecting the organization, functions, and powers of the school district are not to be strictly construed."

State ex rel. School District 238 S. W. l.c. 820
State ex rel. Cornahan v. Jones, 266 Mo. 191, l.c. 201

April 3rd, 1933

On view of the foregoing, it is our opinion that any tax-payer is a qualified voter in this instance, because it limited it specifically to tax-payers under that particular Section 9225 R. S. Mo. 1929.

Section 9225 expressly includes statements of merchants thereby making anyone who pays a merchant's tax unquestionably a qualified voter. Section 7880 says:

"The county court of all counties * * * shall at the regular February term in each year LEVY * * * upon every able-bodied male inhabitant in the county over twenty-one and under sixty years of age * * * A (poll) TAX NOT EXCEEDING FOUR DOLLARS, * * * ."

Sections 7879 to and including 7888 make a poll tax payer a voter as he is charged and made to pay a specified sum to be used in that district, which sum may be recovered by suit under Sections 7886 and 7887 in practically the same manner as any other tax, real, personal or mixed, can be recovered.

Yours very truly,



GEO. B. STROTHER,
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

GBS/mh