

SCHOOLS:-Under Section 17, Laws of Missouri 1931, page 344, board may increase the levy in excess of twenty cents and reject the equalization fee or minimum guarantee.

4-9

April 5, 1934.



Mr. Robert L. Murphy,
Prosecuting Attorney,
Unionville, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I am writing you for an opinion on the following question which deals with the construction of Section 17 of the Laws of Missouri 1931, page 344. My question is as follows:

Does a school board have the right to make a levy in excess of twenty cents on the one hundred dollars assessed valuation after a proposed increase in levy has been voted down by the taxpayers at an election; that is, can they increase the levy and reject the equalization money?

We have a school board up here which has attempted to do this, and they have requested me to get the opinion of your Department on this matter."

Section 17, Laws of Missouri 1931, page 344, provides as follows:

"If any district obtaining the minimum guarantee as provided for herein levies in excess of twenty cents on the one hundred dollars assessed valuation for school purposes (teachers' wages and incidental expenses), without such levy in excess of twenty cents on the one hundred dollars assessed valuation for school purposes (teachers' wages and incidental expenses) be authorized by a majority of the voters who are tax payers of the district voting thereon, such district shall not be entitled to receive state aid for minimum educational program under the provisions of this act. This provision shall not apply to districts

containing cities now or hereafter having a population of fifty thousand or more according to the last decennial United States census."

As we construe the above section, if the board of directors increases the levy in excess of twenty cents on the one hundred dollars assessed valuation without first having such levy authorized by a majority of the voters who are tax payers of the district, then the district will lose the minimum guarantee, as provided for in the preceding section. We do not construe the section to mean that the board cannot in any event levy in excess of twenty cents on the one hundred dollars valuation. If the majority of the voters consent, then they may levy more than twenty cents and still obtain the minimum guarantee as provided therein. However, if the majority of the voters do not consent and the levy is increased in excess of twenty cents, then that district forfeits the minimum guarantee provided for. We construe this section to mean that they may increase the levy and reject the equalization money or the minimum guarantee.

Section 11 of Article X of the Constitution, among other things, provides as follows:

"***For school purposes in districts composed of cities which have one hundred thousand inhabitants or more, the annual rate on property shall not exceed sixty cents on the hundred dollars valuation and in other districts forty cents on the hundred dollars valuation: Provided, The aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are tax-payers, voting at an election held to decide the question, vote for said increase.***"

We believe that the construction given to Section 17 by us is the proper one if we are to give effect to the above constitutional provision. Under the above constitutional provision the levy is fixed at sixty cents in certain cities and forty cents on the one hundred dollars assessed valuation elsewhere. These limitations are fixed without considering a vote of the tax payers. Those rates may be increased by a vote of the tax payers. If Section 17 be construed so that a twenty per cent levy would be the maximum amount which the board could levy, then it appears to us that such provision would be in conflict with the above constitutional provision. Therefore, adopt the view that, not only to reconcile the

statute with the constitution, but from the wording of the statute it was intended not to limit the levy to a maximum of twenty cents, but rather to compel a forfeiture of the minimum guarantee, as provided for therein, if a levy in excess of twenty cents was made without the authorization of a majority of the voters.

It is therefore the opinion of this Department that under Section 17, Laws of Missouri 1931, page 344, the board may make a levy in excess of twenty cents per one hundred dollars valuation, but if they do so without the authority of a majority of the voters who are tax payers voting in favor of such levy, then the district will forfeit the minimum guarantee provided for in the preceding section.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S