SCHOOLS - Board of Directors authorized to withdraw estimate
TAXATION- found insufficient to pay interest and principal on bonds, and to submit in lieu thereof a new and sufficient estimate.

June 7th, 1934.

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FILED
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Honorable Lee Mullins
Prosecuting Attorney
Atchison County
Rock Port, Missouri

Dear Sir:

We have your request of June 2nd, 1934 for an opinion upon the following facts:

> "In the year 1929 "Fairfax School Dist." voted, issued and sold bonds, (I don't know exact amt.) to Commerce Trust Co. of K. C. Missouri. The amount of levy, as limited by Section 9203, 1929 St's, owing to the reduced valuation of property for the district, will not produce sufficient money to meet the principal and interest, which will fall due and be payable from the next year's collections. The letter herewith, which was received from the Trust Company's attorneys, will help you materially to understand the reason this request for your opinion (or advice) in the matter. The levy made by the board on Education of said school, having certified to the County Clerk the amount of their levy, and the clerk having already entered the same on his records, makes the situation rather perplexing, and to the Clerk aggravating; what the Board wants to know <u>from your office</u> is, "Can the Board now increase their levy to an amount sufficiently large to meet the interest and principal which will become due as

> above mentioned and have the clerk re-arrange his books for the collection thereof?"

Article X, Section 12 of the Missouri Constitution, in part, provides as follows:

> " * any county, city, town, township, school district or other political corporation * incurring any indebtedness requiring the assent of the voters as aforesaid, shall before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years *"

The above constitutional provision is self-enforcing. State ex rel. v. Hackmann, 229 S. W. 1082, l.c. 1085. It places upon the local authorities of the various political subdivisions named therein duties mandatory in nature, which cannot be avoided by failure to make a levy or to levy an insufficient amount to pay the interest and principal. In State ex rel. v. Gordon, (1909) 217 Mo. 103, l.c. 119, the Supreme Court points out that a political subdivision (including a school district) named in the above constitutional provision which fails in its duty to provide sufficient funds to pay the interest and principal due may be,

> " *compelled by mandamus at any time to make such levy en masse for all principal and interest past due."

Under Section 9204, Revised Statute of Missouri, 1929, the Board of Directors of a school district are authorized to make an estimate for the levy of a tax,

> " *to be sufficient in amount to pay the annual interest on all bonds* "

Section 9203, Revised Statutes of Missouri, 1929, authorizes the Board of Directors of a school district to make an estimate for the levy of a tax,

> " *the money arising from said tax shall constitute a sinking fund, and shall be used only for the redemption of any outstanding bonds of such district: * "

Under Section 9214, Revised Statutes of Missouri, 1929:

> "The board of directors of each district shall, on or before the fifteenth day of May of each year forward to the county clerk an estimate of the amount of funds necessary to * or meeting bonded indebtedness, and interest on same, * "

It appears that this particular provision has never been passed upon by the courts of this state as to whether it is mandatory or merely directory. However, we are inclined to the belief that it is merely directory. Within the following general state of law taken from 56 C.J., Sec. 679, Section 800,

> "On the other hand, it has been held that a provision, requiring the action of the school board or body in determining upon or voting a tax to be certified, within a specified time, to the authorities whose duty it is to assess the tax or extend it on the tax books, is merely directory, as to time, * "

At the most, the filing of an estimate after the date fixed in the above statute would be an irregularity, and in view of the provision of Section 9979, Revised Statutes of Missouri, 1929, dealing with taxation and revenue in general which provides that no irregularity of any kind shall invalidate the tax, it would seem that the provisions of Section 9214, supra, would be construed as directory.

Section 9261, Revised Statutes of Missouri, 1929 provides that the county clerk, upon receiving the estimates of the various school districts, shall proceed to assess the amount so returned for building purposes,

> " *for sinking fund, forty cents on the one hundred dollars' valuation, and a sufficient amount to pay interest on bonded indebtedness; all of which shall be extended by the county clerk upon the general tax books of the county for said year * "

In view of the vicissitudes of such valuations, it is impossible to fix a levy to produce the exact amount of money needed to pay principal and interest on such bond, and for this reason the Board of Directors is to make an estimate sufficient to pay interest and principal. It has heretofore been held that even though the estimate produced money greatly in excess of such needs, the courts will not revise the estimate. Lyons v. School District (1925), 311 Mo. 349.

Heretofore, directors have been allowed to withdraw their estimate and file a new one. In 56 C. J. p. 692, Sec. 796, it is said:

> "An estimate furnished may be withdrawn before it is acted upon, and another substituted in its stead, * "

The same general rule has been adopted by the courts of this state. State ex rel. v. Phipps (1898) 148 Mo. 31,

l.c. 37; Pope v. Lockhart (1923) 252 S. W. 375.

CONCLUSION.

It is, therefore, the opinion of this office that the school directors of the Fairfax school district may immediately make out a new estimate of a tax levy in an amount sufficient to meet the maturing principal and interest due on bonds of that district and certify the same to the county clerk, whose duty it will be to insert the new levy in figures upon the proper books. The original levy should be withdrawn.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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