

SCHOOLS: SCHOOL DIRECTORS:

The paying of automobile license tax will not qualify a party as director of a school district.

April 9, 1935



Mr. J. E. Lavender
McKittrick
Missouri

Dear Sir:

This Department is in receipt of your letter of April 8, requesting an immediate opinion on the following question:

"I am writing you for a little information. I quote qualifications of school board member:

'He must be 21 years of age - shall have resided in this state one year next preceeding his election, must be a resident tax payer in the district and shall have paid a state and county tax within one year next preceeding his election.'

Does owning an automobile and paying the state for a license make one a tax payer and eligible to be a school board member? The tax or license fee paid the state for auto license goes to the road fund, and it appears to me that the meaning of the law is that to be eligible to serve on a school board he should pay a tax that helps to support the school. Am I right?

Kindly let me hear from you at once.

Thanking you for this information, I remain."

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The section referred to in your letter is evidently Section 9287 N. S. No. 1929, and we will not again quote the same as you appear to be familiar with its provisions.

The outstanding decision in this state, in reference to the qualifications of a director as being a resident taxpayer, is that of State ex rel. Bellamy v. Menengali 307 Mo. l. c. 453, wherein the court said:

"The single issue presented for our consideration is whether the respondent was qualified under Section 11213, Revised Statutes 1919, to hold the office of school director in District No. 80, to which she was elected at the April election in 1922. The above section so far as here pertinent, reads as follows:

'The government and control of the district shall be vested in a board of directors composed of three members, who shall be citizens of the United States, resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding his, her or their election, and who shall have resided in this State for one year next preceding his, her or their election or appointment, and shall be at least twenty-one years of age.'

It was admitted at the trial that respondent possessed all the qualifications required by the above section, to fill the position of school director, except the disputed issue as to whether she was a taxpayer of said school district, and as to whether she had paid, or caused to be paid, a state and county tax within one year next preceding her election in April, 1922.

In Webster's New International Dictionary, a taxpayer is defined as: 'One who pays a tax.' In Funk & Wagnall's New Standard

Dictionary, a taxpayer is defined as: 'One who pays any tax, or who is liable for the payment of any tax.' The evidence is clear and undisputed, that respondent on June 1, 1920, was the legal owner of the property heretofore described, and that it was not exempt from taxation.

Section 12756, Revised Statutes 1919, provides that:

'Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year.'

The undisputed evidence of both respondent and her husband, shows, that some of her personal property was included in the assessment list for 1920, and that she signed her husband's name thereto.

Section 12801 provides that: 'No assessment of property or charges for taxes thereon shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law.'

It was shown without contradiction and without objection, by respondent's husband, that he paid the taxes on his property and that of his wife, mentioned in the assessment list, on December 22, 1921; and that he paid said taxes for the benefit of himself and wife. It appears from the evidence without question, that the automobile mentioned in the list was assessed at \$250.00; that respondent was the joint owner with her husband of the undivided one-half of same, and that the taxes were paid on this machine by respondent's husband for the benefit of both.

Since the adoption of the Married Woman's Act of 1889, it cannot be presumed that personal property in possession of the wife or claimed by her, was paid for with the means of the husband. (Smelser v. Meier, 271 Mo. 178, 196 S. W. 22). Aside from the foregoing, the testimony of both respondent and her husband is clear to the effect that she was the owner of the personal property heretofore described in the assessment list.

We are cited in the respective briefs of counsel to text-books, and decisions outside this State, which throw very little light on the merits of the case. It is clear to us that no citation of authority is needed to sustain the action of the lower court in holding that respondent was qualified to hold the office in question. If any authority were needed, the able and unanswerable opinion of Rombauer, J., in State ex rel. Circuit Attorney v. Macklin, 41 Mo. App. at page 339 and following, settles the question and expresses our views of the subject. It fully sustains the action of the lower court. On page 343, Judge Rombauer concisely states our theory of the law in a case of this character, as follows:

'If a person owns an interest in property, and pays a tax thereon, he pays his tax regardless of the fact to whom the property is assessed.' "

The term 'resident taxpayer' as contained in the section, evidently refers to property, either real or personal, on which a state and county tax must be paid within one year next preceding the election. The decision above quoted from contains the plain definitions of a taxpayer.

The license obtained by a person owning an automobile is more in the nature of a privilege tax not based on assessment of property, but a definite amount for the privilege

of using an automobile. No part of the license fee goes to the individual county or to the school district.

The question of a director attempting to qualify with a merchant's license tax, is discussed in the case of State ex rel. Walker v. Rebenack 135 Mo. 340, in the following language:

"A candidate for the office of school director in the board of president and directors of the St. Louis public schools, who, to be eligible to the office under the statute, must have paid a school tax in the city for two consecutive years, immediately preceding his election, within a few days prior to the election obtained a state merchants' license for the two preceding years for a copartnership of which he was then a member, and paid the license tax thereon, although the firm had in fact been in existence for only a fraction of the last year, and he had no assessable property, subject to tax for the preceding year. Held, that such payment, not being of a lawful tax, was fraudulent, and did not render the candidate eligible to the office."

CONCLUSION

We are of the opinion, that in order for a person to qualify as school director he must have paid a state and county tax within one year next preceding his election, on real or personal property regularly assessed in his name or in the name of some other party, and in which he has an assessable interest, and that the mere owning of an automobile with a license, will not

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qualify him as a resident taxpayer within the meaning of
the statute.

Respectfully submitted,

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