

SCHOOLS:

A rate of levy once voted by the district
cannot be revoked by subsequent vote.

June 7, 1939



Hon. Edward Cusick
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Sir:

This will acknowledge receipt of your recent communication wherein you ask for an opinion from this office, and from which communication we quote as follows:

"Hon. Sir:-

Would you kindly give me the opinion of your office as to the following:

Common School District at annual meeting, 1939, votes to increase levy for school purposes to 50¢ on \$100.00 valuation, no question about regularity of election, Board meets, hires teacher and executes contract therefor. Levy not yet certified to County Clerk - Board now served with petitions of majority of voters of district requesting Board to call a special meeting to vote upon proposition of revoking the levy above voted for at annual election.

First - Has the Board the power to call this special election?

Second - Must they call this

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special election?

Your opinion on the above will
be greatly appreciated."

Answering your letter we say as follows:

I

At the present time the board of directors of each school district in the state is required to provide an annual rate of levy of at least twenty cents on the hundred dollar valuation of taxable property in the district. (Laws 1931, sec. 13, page 340).

Section 9284, sub-section 4, R. S. Mo. 1929, provides in part as follows:

"The qualified voters assembled at the annual meeting, when not otherwise provided, shall have power by a majority of the votes cast. * * * * *
* * * to determine the rate, if any, in excess of forty cents on the one hundred dollars' assessed valuation to be levied for school purposes, as provided for in section 9225."

It may be by reason of the 1931 school laws that a rate of levy in excess of twenty cents must be by vote of the qualified voters of the district.

In any event, when the rate of tax required is determined, whether it be a rate that the board can fix, or whether a rate that the qualified voters must pass on, the board must, under section 9214, R. S. Mo. 1929, forward to or file with the clerk of the county court on or before May 15th, of each year, an estimate of the amount of funds necessary to sustain the school for the time required by law, together with the rate required

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to raise such an amount. The provisions of section 9214 R. S. Mo. 1929, are mandatory and the board in your case must have certified to the county clerk the only rate the board was authorized to certify, to-wit, the fifty cent rate as voted.

As you can see by section 9284, supra, there is express authority for increasing the rate of tax above the legal minimum by vote of the qualified voters. But there is no provision within the school laws, express or implied, whereby either the board or the qualified voter can decrease the rate beneath the legal minimum, or decrease a rate which has once been voted in excess of the legal minimum, or revoke or wipe out a rate already voted into effect.

The powers of a school board are limited to such as are expressly given by the school laws or statutes appertaining to schools. This principle is illustrated by our courts in the case of Consolidated School District No. 6, of Jackson County v. Shawhan, et al, 273 S. W. 182, l.c. 184, wherein the court said:

"Plaintiff district is a corporation created by statute; its board of directors is what the statute makes it, having only such powers and functions as are expressly delegated to it."

Hence, it is our conclusion the school board in question has no power to call a special election for the purpose of submitting a proposition to decrease, revoke or wipe out, the fifty cent rate voted into effect at the last annual meeting.

II

Relative to your second question, it necessarily follows that if the board has no authority to submit the proposition mentioned in your inquiry, then the board cannot be required to call such special election for such purpose.

Yours very truly,

APPROVED:

J. W. BUFFINGTON
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

JWB:RW