

SCHOOLS: School board in common school district may assess a levy up to forty cents per hundred dollars valuation without an election by the taxpayers.

May 24, 1939

5-31



Mr. Delmas E. Liggett
County Superintendent of Schools
Gentry County
Albany, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of April 22, 1939, which reads as follows:

"Will you please advise me on the following situation? District number eight (8) of Gentry County, for years has left the matter of setting the amount of the tax levy in the hands of the local board. So far as I am able to find they have never determined the tax levy by a majority vote at their annual school meeting.

"Two members were elected to the three member board on the platform that they would pay tuition and transportation expenses of students attending high schools in this county and adjoining counties.

"Their present levy is thirty (30) cents, however, they will need a levy of forty (40¢) cents (and the equalization quota, \$1,075) to pay for high school tuition and transportation. A levy of 40¢ on the basis of the teacher and attendance quotas will not yield a sufficient sum (746.00) to allow the board to carry out the program for which two members were elected (by a majority vote).

5/24/39

"A group in the district, with no children, some of which are small landowners (all larger landowners favor 40¢ levy) are objecting to any levy over twenty (20¢) cents.

"(So far as I am able to find the real cause of the objection is a personal matter which should not have been connected with the school election whatsoever, however, they are determined that the newly elected board shall not have funds to carry out the school program which they had planned and for which they were elected to provide).

"Questions:

"Inasmuch as it has been the custom for a number of years of standing to leave the matter of setting the tax levy in the hands of the board, and the school meeting was held with this in mind, then the majority of votes were cast for directors who plainly stated that they favored paying the high school tuition and transportation, and who knew and stated that the program which they proposed would require a 40¢ levy and qualify for the equalization quota of state funds. Would this board have authority to assess a 40¢ levy and qualify for the equalization quota of state funds?

"Would this board have authority to continue the present levy (30¢) in order that they can pay the tuition required by law?

"Is the 20¢ levy the maximum levy for this district this year, notwithstanding the fact that high school tuition must be paid?

"Can a special election for voting a special levy be held after giving posted notice of fifteen days?"

Mr. Delmas E. Liggett

Page Three

5/24/39

Article 10, section 11, Constitution of Missouri, partially reads 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."

Under the above constitutional provision ordinary common school district boards may assess or levy, for school purposes, forty cents on the hundred dollars valuation, and when the rate of levy exceeds forty cents on the hundred dollars valuation a majority of the voters who are tax-payers voting at an election may vote for an increase to an amount not exceeding sixty-five cents on the hundred dollars valuation.

Section 9204, R. S. Mo., 1929, which is a section applicable to all classes of schools, reads as follows:

"Boards of directors are hereby authorized to make an estimate for the levy of a tax upon all the taxable property of the school district at its assessed valuation, said tax to be levied and collected as other taxes for school purposes -- said tax to be sufficient in amount to pay the annual interest on all bonds of their respective districts,

Mr. Delmas E. Liggett,

Page Four

5/24/39

and to pay for the printing or engraving of any bonds that may be issued by virtue of this chapter."

This section of course is limited to that part of article 10, section 11 of the Constitution of Missouri, as above set out.

Section 9225, R. S. Mo., 1929, reads as follows:

"Whenever it shall become necessary, in the judgment of the board of directors or board of education of any school district in this state, to increase the annual rate of taxation for school purposes, or when any five resident taxpayers of such district shall petition such board, in writing, that they desire an increase on the rate of taxation, such board shall determine the rate of taxation necessary to be levied in such district within the maximum rates prescribed by the Constitution for such purposes, and shall submit to the voters of said school district who are taxpayers of such school district, at an election to be by such board called and held for that purpose, at the usual place of holding elections for members of such board, whether the rate of taxation be increased as proposed by said board, due notice having been given as required by section 9283; and if a majority of the voters who are taxpayers voting at such election on the proposition to increase 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 by the clerk or secretary of such board or district to the clerk of the county court of the proper county, 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,

Mr. Delmas E. Liggett

Page Five

5/24/39

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."

This section specifically sets out the method and limits of the voting for an increase of levy by the taxpayers of any school district.

The St. Louis Court of Appeals defines a taxpayer 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. Fassie, 71 S. W. (Mo.) 745. In the following case the party seems to have owned an automobile and was considered a taxpayer. Castilo v. State Highway Department, 312 Mo. 244, l.c. 262. The laws effecting 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.

Section 9227 R. S. Mo. 1929, reads as follows:

"The propositions authorized in sections 9225 and 9226 may be submitted at an annual meeting, or at a special meeting called and held for that purpose. Said board of directors or board of education submitting such proposition shall cause notice thereof to be given as provided by section 9283."

Section 9283, R. S. Mo., 1929, mentioned in section 9225, supra, reads as follows:

"The annual meeting of each school district shall be held on the first Tuesday in April of each year, at the district schoolhouse, commencing at 2 o'clock p. m. If no school-

Mr. Delmas E. Liggett

Page Six

5/24/39

house is located within the district, the place of meeting shall be designated by notices, posted in five public places within the district fifteen days previous to such annual meeting, or by notice for same length of time in all the newspapers published in the district, giving the time, place and purposes of such meeting."

I am presuming that School District No. 8, in Gentry County is a common school district, and under section 9284 R. S. Mo. 1929, the following powers are set out:

"The qualified voters assembled at the annual meeting, when not otherwise provided, shall have power by a majority of the votes cast: Fourth: To determine by ballot, the length of school term in excess of eight months that the public schools of this district shall be maintained for the next scholastic year; also, to determine the rate, if any, in excess of forty cents on the hundred dollars assessed valuation to be levied for school purposes as provided for in section 9225."

Under section 9225, supra, if the election is held on the annual meeting of the school board it is not necessary for the board to first fix the rate as the matter is settled by the vote of the taxpayers, but if it is a special election, then the minutes of the board at a meeting previous to the special election should show the rate agreed when set by the board. It was so held in the case of *Betton v. Scott*, 168 Mo. 378, l.c. 389, in which the court said:

"First, that in order to increase the rate of taxation for school purposes above forty cents on the \$100 valuation, the board must first determine the rate necessary, and submit the proposition to the voters of the district,

and said proposed rate must be adopted by a majority of the voters voting upon said proposition, and that in this case both the board and the voters have failed to comply with these requirements, and, hence, the increase is void.

"Second, that since the adoption of the Constitution of 1875, the interest and sinking-fund tax must be voted by the taxpayers of the school district at the same time when the indebtedness on which it is to be applied originated.

"1. Proceeding to a consideration of these in the order mentioned, it will be observed that the contention that the qualified voters can not determine the rate for school purposes, but can only reject or adopt the rate first determined by the board, is predicated upon section 9777, Revised Statutes 1899. We can not give our assent to this view.

"Counsel evidently do not discriminate between those things which the qualified voters of a school district may do at an annual meeting and those which may be done at a special or called meeting. The time and place of the annual meeting is fixed by law. (Sec. 9749, R. S. 1899). At such annual meeting the qualified voters have the power by a majority of the votes cast, among other things: "Fourth. To determine, by ballot, the length of school term in excess of six months that the public schools of the district shall be maintained for the next scholastic year; also to determine the rate, if any, in excess of forty cents on the one hundred dollars valuation to be levied for school purposes as provided for in section 9777." (Sec. 9750, R. S. 1899).

"There is nothing in section 9750 which requires the board of directors to first determine the rate and submit it to the annual meeting, be-

Mr. Delmas E. Liggett

Page Eight

5/24/39

cause at that meeting the qualified voters determine the length of the term and the law requires that they shall be furnished with a statement of the finances of the district as was done in this case.

"With this information before them the voters can intelligently fix the length of the term and the rate of taxation necessary to support the school without any estimate of the board. Moreover, as the board can not know in advance what length of term the voters will fix upon, any estimate it would make would be pure conjecture. It can not be that the increase is void unless the board first determines the rate, as the whole power of fixing the length of term and determining the rate is vested in the qualified voters. If the board suggests a rate it is clear the voters could reject it.

"We are of opinion that it was amply sufficient to submit the question of an increase of rate and leave it to the voters to determine what it should be. The purpose of the law was that the voters should authorize the increase over forty cents, and this they did and specified sixty cents as the rate.

"Section 9777, Revised Statutes 1899 on its face discloses that it is a provision for a special, not an annual meeting. That section looks to a condition when the board in its judgment deems it necessary to increase the rate, and the meeting is only authorized to pass upon those things for which it is called. Such a meeting is not to determine the rate but to increase that already determined at the annual meeting."

CONCLUSION

In view of the above authorities in answer to your first query, will say that it is the opinion of this depart-

Page Nine

ment that the school board at their annual meeting may set the rate of levy for school purposes in the district at any amount, providing the same is not in excess of forty cents on the hundred dollars valuation of the property in the district, but if at the annual election the board desires to raise the rate of levy in excess of forty cents, it would be necessary for the majority of the taxpayers at the annual meeting by an election to authorize a levy in excess of forty cents on the hundred dollars valuation.

In answer to your third query, will say that if the board has ordered a levy of thirty cents on the hundred dollars valuation, at the regular annual meeting, it is not necessary for the taxpayers to vote upon that order, or even by way of a special election.

In answer to your third query, will say that it is the opinion of this department that if the school board at the annual election had set the levy at twenty cents on the hundred dollars valuation, and that the same has been certified and accepted by the county clerk it would be necessary that a special election be held in accordance with section 9225, supra.

In answer to your fourth query will say that it is the opinion of this department that under section 9225, supra, which holds that the election should be properly advertised as set out in section 9283, supra. Under section 9283 it describes the method, time and place of holding the annual meeting of the school board in each school district. It sets out that the meeting should be held in a school house and if no school house is located within the district the meeting shall be designated by notices posted in five public places within the district fifteen days previous to such annual meeting or by publication in a newspaper.

Section 9225, supra, states that the election on a proposal to raise the levy beyond the forty cents per hundred dollars valuation, to be published as set out in section 9283, R. S. Mo. 1929, and according to this section, it is the opinion of this department that a

Hon. Delmas E. Liggett

5/24/39

Page Ten

special election for voting a special levy may be held after giving posted notice of fifteen days.

As indicated by your request, it is your desire to obtain state aid under the provisions as set out under the Laws of Missouri, 1931. It is further the opinion of this department that where the school district desires state aid it is necessary as set out under section 17, of the Laws of Missouri, 1931, page 344, that where the school board makes a levy in excess of twenty cents on the hundred dollar assessed valuation for school purposes, it must be authorized by a majority of the voters who are taxpayers of the district voting upon said levy; but where the school district does not desire state aid the board may make a levy of forty cents upon a one hundred dollar valuation without an election. It is also the conclusion of this department, that where the levy is not in excess of twenty cents the school district would be entitled to state aid without an election upon the levy.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

TYRE W. BURTON
(Acting) Attorney General

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