

TAXATION: Board of Education may fix tax under levy voted by people.

April 15, 1940

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Mr. Howard D. McEachen, Superintendent
Monett School District
Monett, Missouri



Dear Sir:

We are in receipt of your letter of April 4, 1940, in which you inquire whether the Board of Education of Monett has the right to reduce a tax of forty (40%) cents on the one hundred (\$100.00) dollar valuation, which was voted at a regular election for building purposes, to thirty (30%) cents on the one hundred (\$100.00) dollar valuation.

Section 9214, R. S. Mo. 1929, which was amended in Laws of Missouri, 1939, at page 698, is as follows:

"The board of directors of each district shall, on or before the fifteenth day of May of each year, forward to the county superintendent of schools an estimate of the amount of funds necessary to sustain the schools of their district for the time required by law, or, when a longer term has been ordered by the annual meeting, for the time thus decided upon, together with such other amount for purchasing site, erecting buildings or meeting bonded indebtedness, and interest on same, as may have been legally ordered in such estimate, stating clearly the amount deemed necessary for each fund, and the rate required to raise said amount."

This section is applicable to all classes of schools, and the estimate, when forwarded to the county superintendent and transmitted by him to the county clerk, becomes the levy when acted upon by the county court.

The question of the right of the directors of the various school districts in the state has been discussed by our Supreme Court in State ex rel. Thorp v. Phipps, 148 Mo. 31. In that case the voters of the district had voted a levy of one hundred (100¢) cents on the one hundred (\$100.00) dollar valuation. In the estimate submitted to the county clerk, the total levy amounted to only ninety-eight (98¢) cents on the one hundred (\$100.00) dollar valuation. We find the following in the opinion of the court, l. c. 36:

"The question which the Constitution required to be submitted to the tax-paying voters of the district, was, whether the rate of taxation for school purposes might be increased to one hundred cents on the \$100 and that is the only question the statute required to be submitted to their vote. Sec. 8005

That question was decided in favor of such increase in this instance, and authorized an increase of the rate to ninety-eight cents on the \$100, the same being within the limit of the authority granted. With the apportionment of the tax thus authorized the voters had nothing to do. That duty was devolved upon the board. Sec. 8000. And the authority to apportion the same as was done in the estimate in question was in no way affected by the suggestion of a different apportionment in the notice of the election. So that there is nothing in this contention."

In Pope v. Lockhart, 299 Mo. 141, the question arose as to the right of the school board to make an estimate of the funds necessary to sustain the local schools. In commenting on the power of the school board in this respect, Judge Blair, speaking for the court, stated:

" * * * It is clear that the Legislature committed to the school board the duty to make the estimates for the year, and that the board kept its estimate well within the lawful limits of the levy constitutionally authorized by the voters. The courts are not expressly given authority to revise the estimates of the board, and will not arrogate to themselves such power merely because it may be thought the levy recommended will raise a sum in excess of the needs of the fund for which the levy is made, nor yet because there may be some evidence tending to show an intent to divert the money, after its collection, to another purpose, since this can be dealt with when such attempt at diversion is made. (C. C. C. & St. L. Ry. Co. v. People, 208 Ill. l. c. 11, 12, and cases cited; 1 High on Injunctions (4 Ed.) sec. 544, pp. 517, 518, 519.) The power given the board is 'highly discretionary' and legislative in nature."

The latter case has been recently approved by our Supreme Court in State ex rel. Marlowe v. Lumber Company, 332 Mo. 379, l. c. 391.

It is apparent from these authorities that a discretionary power is vested in the various school boards of the state as to the amount of the tax levy for the ensuing year, and that there is no limitation on such discretion except that the tax imposed must be within the constitutional limit, or such limit as may be voted by the people in accordance with the constitution.

It is our conclusion, therefore, that the Board of Education of Monett has the right to make a reduction in

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the levy voted by the people if, in their discretion, a lesser amount is sufficient for school purposes.

Respectfully submitted,

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APPROVED:

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RLH:VC