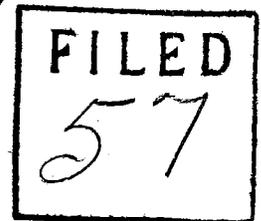


TAXATION: Levying of taxes by directors of school districts and the right of the county court to amend such levies when such court is making the levy of taxes on railroads and other carriers for the rolling stock, road bed and movable property of such carriers.

September 26, 1946



Honorable W. V. Mayse  
Prosecuting Attorney  
Harrison County  
Bothany, Missouri

Dear Sir:

This is to reply to yours of recent date wherein you submitted the following request for an official opinion from this department:

"I enclose herewith a copy of a letter from the Chicago, Burlington & Quincy Railroad to Mr. A. M. Justice, one of the three County Judges in our county, relative to levy of school taxes. The letter is self-explanatory. The railroad is saying that: 1. A school district does not have any right to levy an amount for school purposes in excess of that which will be necessary to raise enough revenue for the up-keep and operation of the school in any particular district for the year for which the levy is made. In other words, they are adopting the position that the school district cannot make a levy which will not only operate the school but will leave, in addition thereto, a surplus.

"Point two raised by them is that if it be found that levies made in districts of counties are more than is needed to take care of anticipated expenses in the various districts, individually, does the County Court then have the power to reduce the rate of levy for school purposes?"

Section 10347, R. S. No. 1939, which was repealed and reenacted by the 63rd General Assembly in Senate Bill No. 208, approved on January 25, 1946, and which Senate Bill relates to the levying of school taxes by district boards, reads as follows:

"The board of directors of each school 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 money to be raised by taxation for the ensuing school year, and the rate required to produce said amount, specifying by funds the amount and rate necessary to sustain the school or schools of the district for the time required by law or authorized by the qualified voters of the district, to meet principal and interest payments on the bonded debt of the district, and to provide such funds as may have been ordered by the qualified voters of the district for other legitimate district purposes, including the purchase of school building sites, buying or erecting school buildings, repairing and furnishing such buildings, and providing foot bridges across running streams."

It will be noted that this section requires the board of directors of the school district to forward their estimates and rates to the county superintendent of schools. Under Section 10612, R. S. No. 1939, the duties of the county superintendent of schools, with respect to such estimates and rates, are as follows:

"\* \* \* he shall receive, and, if properly made, approve estimates and enumeration lists and turn same over to the county clerk \* \* \*"

While your letter does not indicate whether or not the estimates and rates were submitted to the county superintendent of schools and were approved by him, for the purpose of this opinion we will assume that the officials did perform these duties. In 31 C. J. S., page 799, Sec. 146, the principle applicable in such cases is stated as follows:

"In the absence of evidence to the contrary, there is always a presumption that official acts, including ministerial acts, or duties have been properly performed, and in some states this presumption is expressly prescribed by statute. Stated in another way, it is, as a general rule, presumed that a public official properly and regularly discharges his duties, or performs acts required by law, in accordance with the law and the authority conferred on him, \* \* \*"

In *Waterman v. Chicago Bridge & Iron Works*, 41 S. W. (2d) 575, the court, in applying the rule as to the Workmen's Compensation Commission, made this statement (l. c. 578):

"So far as the record shows there was no irregularity in the proceedings. Irregularity cannot be presumed. The presumption is to the contrary, to wit, that public officials have properly performed their duties. \* \* \*"

With this presumption in mind we may assume that the board of directors of the various districts forwarded their estimates and rates to the county superintendent of schools and that he received those estimates and rates, found that they were properly made and approved them and turned them over to the county clerk.

Then under Section 10395, R. S. No. 1939, which was repealed and reenacted without any change as to the duties of the county clerk, with respect to the question here involved, by said Senate Bill No. 208, it is provided as follows:

"On receipt of the estimates of the various districts, the county clerk shall proceed to assess the amount so returned on all taxable property, real and personal, in each district, as shown by the last annual assessment for state and county purposes, including all statements of merchants in each district of the amount of goods, wares and merchandise owned by them and taxable for state and county purposes; Provided, the levy

thus extended shall not exceed in any one year the following rates on the hundred dollars assessed valuation; \* \* \*"

The first part of your request involves the question of whether or not a board of directors of a school district may make a levy which will bring in more taxes than are needed for the district to operate on for the current year.

In treating a question similar to the one here under consideration, the Missouri Supreme Court, Division One, in the case of Pope v. Lockhart et al., 252 S. W. 375, 376, said:

"The statute (section 11142, R. S. 1919) makes it the duty of the school board to make the estimate of the funds necessary to sustain the school in its district and state the amount and the rate required to raise it. Section 11183, R. S. 1919, makes it the duty of the county clerk 'on receipt of the estimate \* \* \* to assess the amount so returned on all taxable property, \* \* \*' except he shall not exceed stated limits which do not affect the question in this case. The withdrawal and correction of the mutilated estimate was lawful. State ex rel. v. Phipps, 148 Mo. loc. cit. 36, 37, 49 S. W. 865. 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. loc. cit. 11, 12, 69 N. E. 832, and cases cited; 1 High on Injunctions (4th Ed.) Sec. 544, pp. 517-519. The power given the board is 'highly discretionary' and legislative in nature."

In the case of Lyons v. School District of Joplin, 278 S. W. 74, a taxpayer attempted to enjoin the collection of a school tax levied for the payment of building and repairs and for a sinking fund, contending that the levy for the building and repairs was in excess of the constitutional limit and that the levy for the sinking fund was in excess of the sum needed for the current year. In speaking of the levy in excess of the amount needed for the sinking fund for the current year, the court said (l. c. 77):

"\* \* \* The levy for interest, as we have already remarked, appears to be more than sufficient to pay the annual interest, but that fact, with the allegation that there is an intent to divert some of the fund when received, did not avoid the levy nor warrant injunction against the collection of those taxes. Upon the situation thus presented, the holding of this division of this court in Pope v. Lockhart, 299 Mo. 141, 252 S. W. 375, is apposite. \* \* \*"

And in considering the powers and duties of the county court in respect to levies of school taxes, the Springfield Court of Appeals in the case of State ex rel. Chadwick Consol. School Dist. v. Jackson, 84 S. W. (2d) 988, said (l. c. 989-990):

"\* \* \* In so far as the making of levies for school districts is involved, the county court has been given no supervisory powers whatever. Estimates for sinking fund and interest on bonded indebtedness of any district are made by the school board of such district. Sections 9203, 9204, R. S. Mo. 1929 (Mo. St. Ann. Secs. 9203, 9204, pp. 7076, 7077). Upon receipt of such estimates it becomes the duty of the county clerk to make the assessment against the taxable property lying within

the district, if within the limits proscribed by law. Section 9261, R. S. No. 1929 (Ho. St. Ann. Sec. 9261, p. 7109). The board of directors in this case made an estimate of 25 cents on the \$100 valuation for sinking fund and a similar amount for interest. Such estimate was within the constitutional and statutory limit. It is true that at the time the estimate was made there appears to have been on hand sufficient funds belonging to the district to have retired all outstanding bonds. It was upon such state of facts the county court attempted to quash the levy and order the county collector not to collect the alleged illegal levy. There is no statutory authority for such procedure or exercise of judicial power by a county court. In fact, no court is given statutory power to revise an estimate of a school board when within the legal limits allowed by law. \* \*"

The foregoing cases dealt with the question of the authority of the county court to revise an estimate and levy made by a board of directors of a school district. In all of those cases the levies were made for local taxes. However, each of the cases hold to the effect that it rests within the sound discretion of the board of directors as to how much their estimate will be and what their levy will be and that no court is given statutory power to revise an estimate of a school board when within the legal limits allowed by law.

In the levying of a tax on the road bed, rolling stock and movable property of railroads and other carriers, the powers and duties of the county court with respect to such levies are different. Section 11260, R. S. No. 1939, relating to those duties, was repealed and reenacted by the 63rd General Assembly in House Committee Substitute for House Bill No. 535, approved December 13, 1945, and by Section 18 thereof it is provided in part as follows:

"For the purpose of levying school taxes, and taxes for the erection of public buildings, and for other purposes, in the several counties of this state, on the

roadbed, rolling stock and movable property of railroads in this state, the several county courts shall ascertain from the returns in the office of the county clerk the average rate of taxation levied for school purposes, and also the average rate of taxation levied for the erection of public buildings, and for other purposes, each separately, by the several local school boards or authorities of the several school districts throughout the county. Such average rate for school purposes shall be ascertained by adding together the local rates of the several school districts in the county and by dividing the sum thus obtained by the whole number of districts levying a tax for school purposes, and shall cause to be charged to said railroad companies taxes for school purposes at said average rate on the proportionate value of said railroad property so certified to the county court by the State Tax Commission, under the provisions of this article, and the said clerk shall apportion the said taxes for school purposes, so levied and collected, among all the school districts in his county, in proportion to the enumeration returns of said districts. \* \* \*

In the case of State ex rel. v. Hannibal and St. J. R. R. Co., 135 Mo. 618, the court, in construing the statute of 1889, which contained the same provisions as to the levying of school taxes on railroads as does the said Section 18, supra, said, l. c. 628:

"By that statute express power is given to the county court, and to the county court alone, to levy such taxes on railroad property, both local and distributable, and the manner is prescribed in which that power shall be exercised (secs. 7731, 7732), and until the county court has made such levy, the clerk has no power to extend such taxes upon the tax books against the property of the railroad company (sec. 7733). \* \* \*"

And in discussing the question of the duties of the county court under this section, the court said, l. c. 630:

"This statute seems to be susceptible of but one construction, and that is that the value of the roadbed and rolling stock and other movable property of the railroad company shall be taxed for school purposes at the average rate, and that tax be distributed to the several school districts of the county, and that the buildings on the right of way shall be taxed at the rate that other property is taxed in the district in which such buildings are situate, and that such tax shall go to such district."

In the case of State ex rel. Lano v. The Hannibal & St. J. Ry. Co., 110 Mo. 265, 271, the court in speaking of the procedure of the county court, in making these assessments, said:

"\* \* \* It was the duty of the county court to ascertain the average rate of taxation for school purposes and building purposes from the official returns of the local school boards filed with the county clerk, \* \* \*"

This statement would indicate that the county courts must use the statement of the estimates and rates filed by the county clerks to ascertain the average rate of assessment.

From all of the cases which we have cited herein it seems that so long as the boards of directors of the school districts stay within the constitutional and statutory limits in making their estimates and rates for the purpose of levying taxes, that the county courts would be required to use those estimates and rates for the purpose of arriving at the average rate to be levied and assessed against railroads and other carriers. Since the powers and duties of county courts and boards of directors of school districts are purely statutory, then they can perform only such functions as are prescribed by statute.

On the question of the authority of the county court to amend or revise these estimates and levies, we find that a

statute was enacted in 1933, Laws of Mo., 1933, page 424, Section 11118, R. S. Mo. 1939, which might have given county courts authority to revise estimates and levies such as are under consideration here. This law was enacted following the decisions in the cases which laid down the rule that county courts could not revise estimates and levies of boards of directors of school districts. However, the 63rd General Assembly by House Committee Substitute for House Bill No. 537, approved December 5, 1945, repealed said Section 11118, R. S. 1939, and there does not seem to be any authority now for a county court to change the assessment of an assessing body. That being the case, the county court would be bound by the principles announced in the earlier cases, that is, that the estimates and rates submitted by the boards of directors of school districts may not be revised or amended by the county court.

#### Conclusion

From the foregoing it is the opinion of this department that the estimates and rates for the purpose of levying taxes to operate schools, lies within the sound discretion of boards of directors of the school districts and that the county courts do not have any authority to revise such estimates of the amount needed for taxes and the rates made by the directors even though the tax derived by such estimates and rates will exceed the amount actually needed by the district for the current year's expenses.

We are further of the opinion that county courts, in making the assessments and levies of taxes for school purposes against the roadbed, rolling stock and movable property of railroads and other carriers which are similarly taxed, must use the estimates and rates submitted by the directors of the school districts of the counties as a basis for determining the average rate to be levied against such carriers and that the county court does not have any authority to revise or change the estimates and rates so submitted.

Respectfully submitted,

APPROVED:

TYRE W. BURTON  
Assistant Attorney General

---

J. E. TAYLOR  
Attorney General

TWB:EG