

SCHOOLS: In order to qualify under Section 10420, R.S. Mo. 1939, a school director elected must be a taxpayer, who shall have paid a state and county tax within one year next preceding his election.

copy to Mr. John

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Honorable Wilson D. Hill
Prosecuting Attorney
Ray County
Richmond, Missouri

Dear Sir:

This is in reply to your letter dated April 25, 1947, in which you requested an opinion on the qualification of a school director. Said letter reads as follows:

"Could a person elected as a School Director qualify, if he owns no property, either real or personal within the County or State, and pays only a sales tax?"

Section 10420, R.S. Mo. 1939, sets out the qualifications of school directors as applied to common schools. The part of said section pertinent to our question 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. * * * * *

The court in State v. Heath, 132 S.W. (2d) 1001, 345 Mo. 226, in commenting on Section 9287, R.S. Mo. 1929, which is now Section 10420, supra, said at l.c. 1004:

"Section 9287, R.S. 1929, Mo. St. Ann. Section 9287, p. 7148, provides that common school districts shall be governed by a board of three directors 'who shall

be citizens of the United States, resident taxpayers of the district (21 years of age), 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.' The decisive question here is whether or not respondent, under the admitted facts, has complied with the above italicised part of the section prescribing qualifications essential to his eligibility to the office of school director. Sec. 9328, R.S. 1929, Mo. St. Ann. Section 9328, p. 7168, prescribes this same qualification for directors of City, Town and Consolidated schools; see also Sec. 9517, R.S. 1929, and Sec. 9572, R.S. 1929, Mo. St. Ann. Sec. 9517, p. 7281, and Section 9572, p. 7307, for qualifications in larger cities where strangely this requirement is relaxed or abolished. It should also be noted that substantially the same provision is made concerning qualifications of members of both houses of the General Assembly. Const. Art. 4, Sec. 4 and Sec. 6, Mo. St. Ann. The evident purpose of this requirement is to have such officers, who impose taxes on others and determine how they shall be spent, chosen from among those citizens who have been paying, and will likely continue to pay, taxes. It is said, however, that such 'statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers.' 46 C.J. 937, Sec. 32. The Missouri decisions have given a liberal construction to this and similar sections prescribing requirements of eligibility to elective offices.

"In State ex inf. Bellamy ex rel. Harris v. Menengali, 307 Mo. 447, 270 S.W. 101, this court held that a married woman was qualified to be a common school director, under

this section, if she actually owned taxable property in the district upon which taxes were paid for the year prior to her election, although the property was assessed in the name of her husband and the taxes were paid by him. * * * * *

The court continued at l.c. 1004:

"In State ex rel. Circuit Attorney v. Macklin, 41 Mo. App. 335, the court construed a statute which made the requirement for eligibility for the office of school director in St. Louis, that such person must have 'paid a school tax therein for two consecutive years immediately preceding his election.' The court held that considering the method of assessment and collection of taxes that this meant a person was eligible 'who shall have paid, at any time preceding his election, a tax for the benefit of schools within said city for the two consecutive calendar years, next preceding the year of his election, assessed on property in which he has an interest subject to taxation, at the date of assessment or date of payment.' The court held that a director was eligible who had, during the month prior to his election in 1889, 'bought a small piece of property in the city of St. Louis, on which there were delinquent school taxes for the years 1887 and 1888 and paid them,' saying 'he did pay taxes for the benefit of schools within the city of St. Louis for two consecutive years immediately preceding his election. * * * an extensive examination of this subject has failed to bring to our notice a case, where the mere fact that the person affected has paid taxes immediately preceding an election with the sole object of obtaining thereby a qualification as elector or officer, which he did not otherwise possess, was treated as a fraud upon the law.'"

At l.c. 1005, the court said:

"* * * Surely Sec. 9287, Mo. St. Ann. Sec. 9287, p. 7148, was not intended to make eligibility depend upon the payment of any state and county tax within one year's time before the date of the election. To so construe it would make one eligible, who paid, within such period of one year, a tax three or four years delinquent, even though he had paid no taxes for any other year after such tax paid became delinquent and had no taxable property thereafter. In view of our method of assessing and collecting property taxes and the time when common school elections are held, we think it contemplated the payment of the current taxes payable during the calendar year preceding the school election since no other property taxes could become due between the end of that year and the school election. We, therefore, hold that the reasonable construction of the statutory requirement, 'shall have paid a state and county tax within one year next preceding his * * * election,' is that a person, to be eligible to serve as a common school director, shall have paid the state and county tax which was due and payable within the calendar year next preceding his election. * * * * *

In State ex inf. Sutton v. Fasse, 189 Mo. 532, the court in commenting on that part of the section which said that the directors, in order to qualify, must be resident taxpayers of the district, said at l.c. 536:

"Appellant insists the requirement that a school director must be a resident taxpayer of the district means that he must have paid taxes for school purposes within the district. That contention cannot be adopted without enlarging the language of the statute and changing its intention. The meaning is that a person who is a qualified voter of the district and also a taxpayer is eligible. A qualified voter is

defined in the same section to be one who, under the general laws of the State, would be allowed to vote in any county for State and county officers and who has resided in the district thirty days preceding the school district meeting at which he offers to vote. Any person who possesses those qualifications is a qualified voter as defined in section 9798 (9759?) in regard to the qualifications of school director. If he is also a taxpayer (that is, a person owning property in the State subject to taxation and on which he regularly pays taxes) he is eligible to the office of school director whether he has in fact paid a tax within such school district or not; * * * * * (Underscoring ours.)

Although, as indicated in the Heath case, supra, the section setting forth the qualifications has been given a liberal construction, we feel that such construction is only applicable to the extent it was employed in the Menengali case, referred to in the Heath case, where the court was determining whether the woman elected school director was owner of property, and they held she was, even though the property was assessed in the name of her husband and the taxes were paid by him. In the Menengali case, 307 Mo. 447, the court, in referring to Section 11213, R.S. Mo. 1919, which is now Section 10420, supra, said at l.c. 453:

"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."

Thus from the above it would appear that there can be no doubt but that it was intended that the qualification requirement that a school director be a taxpayer meant a person who owns property in this state subject to an assessment which he regularly pays. But, under the facts as presented in your letter, you state that this person elected school director owns no property, either real or personal, within the county or state and pays only a sales tax. Under such circumstances, there apparently is no question, as was presented in the Menengali case, as to any claim that he has paid any tax so as to have complied with the prescribed qualifications of Section 10420, R.S. Mo. 1939, essential to his eligibility to the office of school director.

CONCLUSION

It is, therefore, the opinion of this department that under Section 10420, R.S. Mo. 1939, a person elected as a school director does not qualify as a resident taxpayer of the district who shall have paid a state and county tax within one year next preceding his election if he owns no property, either real or personal, within the county or state and pays only a sales tax.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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