

SCHOOLS.

BUILDING FUND TAX LEVY:

The provisions of Senate Bill No. 208, passed by the 63rd General Assembly, make it possible for school districts to authorize and levy a building fund tax for the purpose of purchasing school building sites, buying or erecting school buildings and repairing and furnishing the same.

March 27, 1947

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Mr. Hubert Wheeler, Commissioner  
Division of Public Schools  
Department of Education  
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter dated January 18, 1947, in which you requested an opinion from this department, and which in part reads as follows:

"Boards of education have asked some specific questions concerning the provisions of the laws of this state and the new constitution for authorizing and levying school taxes and the various purposes for which they may be used.

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"The provisions of S. B. 208, Laws of 1946, and the laws governing school funds and fund accounting seem to be specific and broad enough to include a special building fund tax for the purposes indicated herein. However, I shall appreciate your advice and official opinion in regard to the following question:

"Do the laws of this state together with the new laws enacted for implementing the new constitution make it possible for school districts to authorize and levy a building fund tax for the purpose of purchasing school building sites, buying or erecting school buildings, and repairing and furnishing such buildings? If not, from what source would funds be secured for such purposes?"

The Constitution of 1875, Section 11, Article X, provides in part:

"Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. \* \* \* \* 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 taxpayers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city or school district, voting at such election, shall vote therefor. \* \* \* \* \*"

In Peter v. Kaufmann, 38 S.W. (2d) 1062, the court, in referring to the above mentioned provision of the Constitution, said at l.c. 1066:

"There are manifestly two methods contemplated by the Constitution for raising funds to erect school buildings by school districts. One is by incurring indebtedness in some form, as by issuing bonds or borrowing money in some form. Limitation on this method of raising money is imposed by section 12, art. 10, of the Constitution and also by various statutes. The second method of raising money to build school

houses is by levying annual taxes for that purpose. A school district which does not wish to issue bonds or borrow money to erect a school building may do so by levying a tax for that purpose for one or more years. Section 11, art. 10, of the Constitution places limitations on the annual rates of taxation which can be levied for school purposes, which term is construed to cover all the usual and ordinary expenses of maintaining and operating schools. *Hudgins v. Consolidated School District*, 312 Mo. 1, 12, 278 S.W. 769. But, as we have seen, the only limitation on the rate of taxation for buildings is that such rate and the purpose thereof shall be submitted to a vote of the people of the district and receive the sanction of a two-thirds majority of those voting. Therefore, no building tax, whatever the rate, which has received a two-thirds majority vote of the voters of the district at a legally called election, can be held violative of the Constitution. A limitation of 100 cents per \$100 valuation is fixed by statute. Section 11183, Rev. St. 1919. A levy for building purposes and erection of buildings is a separate and distinct tax not included in the term 'school purposes' and not subject to the limitation as to amount imposed by the Constitution. *Hudgins v. Consolidated School District*, 312 Mo. 1, 12, 278 S. W. 769. It stands on its own foundation, unhampered by other levies, and, being within the limits fixed by statute, it cannot be held to be excessive or violative thereof."

The court continues at l.c. 1067:

"Our present ruling is in accord with *Hudgins v. Consolidated School District*, 312 Mo. 1, 12, 278 S.W. 769, 771, where the court upheld a bond issue 'for the purpose of purchasing a site, erecting a school building, and furnishing the same,' as not being within the term 'school purposes,' as used in the Constitution, but as being within the term 'erecting public buildings.' The court there said:

'The constitutional limitation in section 11, as applied to a levy of taxes by school districts, has reference to the annual rate of such levy for school purposes for that year. By "school purposes," as the term is used in the Constitution, is meant such annual expenditures as are necessary to the conduct or maintenance of the school during the year. C. & A. R. Co. v. People, 163 Ill. loc. cit. 621, 45 N. E. 122. The fixed rate in districts, as at bar, for school purposes, is 40 cents on the \$100 valuation of the property of the district. This rate may be increased for the same purpose, by a majority vote of the people, to 65 cents on the \$100 valuation (100 cents in town districts). These limitations, however, have no application to the creation of a debt for building purposes and the equipment of such buildings as may be erected.'

It is to be noted that the Constitution of 1945 does not carry through the distinction between "school purposes" and "for the purpose of erecting public buildings," as does the Constitution of 1875, Section 11, Article X, supra. The analogous section in the 1945 Constitution is found in Section 11(b) and Section 11(c), Article X. Section 11(b) provides in part:

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

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"For school districts formed of cities and towns--one dollar on the hundred dollars assessed valuation, except that in the City of St. Louis the annual rate shall not exceed eighty-nine cents on the hundred dollars assessed valuation;

"For all other school districts--sixty-five cents on the hundred dollars assessed valuation."

Section 11(c) provides in part:

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law;

\* \* \* \* \*

Senate Bill No. 208, passed by the 63rd General Assembly, repealed Sections 10347, 10358, 10359, 10360, 10395, and 10460, R.S. Mo. 1939, and enacted in lieu thereof three new sections, known as Sections 10347, 10358 and 10359. This was enacted to implement the new Constitution as it related to school tax levies. Section 10347 of Senate Bill No. 208 is in substance the same as Section 10347, R.S. Mo. 1939, and provides that school boards shall file an estimate each year showing the rate required to produce said amount, specifying by funds the amount and rate necessary to sustain the school and to meet the principal and interest payments on the bonded debt of the district. The estimate shall include such funds as may have been ordered by the qualified voters of the district and other legitimate purposes, including the purchase of school sites, erecting buildings and repairing and furnishing such buildings.

Section 10358, R.S. Mo. 1939, says:

"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 10418; 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, 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."

Section 10358, Senate Bill No. 208, says:

"Whenever it shall become necessary, in the judgement of the board of directors or board of education of any school district in this state, to increase the annual rate of taxation, authorized by the constitution for district purposes without voter approval, or when a number of the qualified voters of the district equal to ten per cent or more of the number casting their votes for the directors of the School Board at the last school election in said district shall petition the board, in writing, for an increase of said rate, such board shall determine the rate of taxation necessary to be levied in excess of said authorized rate, and the purpose or purposes for which such increase is required, specifying separately the rate of increase required for each purpose, and the number of years, not in excess

of four, for which each proposed excess rate is to be effective, and shall submit to the qualified voters of the district, at the annual school meeting or election, or at a special meeting or election called and held for that purpose, at the usual place or places of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board, due notice having been given as required by Section 10418; and if two-thirds of the qualified voters voting thereon shall favor the proposed increase for any purpose, the result of such vote, including the rate of taxation so voted in such district for each purpose, and the number of years said rate is to be effective, 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 receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all taxable property, 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."

From a comparison of these two sections, it is quite obvious to notice that Senate Bill No. 208 omits the words "for school purposes" and merely says "whenever it shall become necessary \* \* \* \* to increase the annual rate of taxation \* \* \* \*." Senate Bill No. 208 repealed and omitted Section 10359, R.S. Mo. 1939, which provided for the board of education to submit to the voters the proposition of an increase of the tax levy for the purpose of paying for school sites, for repairing or furnishing such buildings, or for building, repairing and maintaining foot bridges over running streams.

Thus, we have then the distinction the courts have made of the terms "school purposes" and "for the purpose of purchasing a site, erecting a school building and furnishing the same" as pointed out in the Kaufmann case, supra. We also have the different wording employed in Section 10358 of Senate Bill No. 208 from that of Section 10358, R.S. Mo. 1939, which Senate



The remaining comparison is to be found in the later provision of Section 10358, R.S. Mo. 1939, where it says:

"\* \* \* and if a majority of the voters \* \* \* 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, \* \* \* \* \*"

and Section 10358, Senate Bill No. 208, where it says:

"\* \* \* and if two-thirds of the qualified voters voting thereon shall favor the proposed increase for any purpose, the result of such vote, including the rate of taxation so voted in such district for each purpose, \* \* \* shall be certified by the clerk or secretary of such board or district to the clerk of the county court of the proper county, \* \* \* \*" (Emphasis ours.)

Section 10366, Missouri Laws of 1943, page 893, establishes school funds and prescribes a definite fund accounting of all school moneys; namely, Teachers' Fund, Incidental Fund, Free Textbook Fund, Building Fund, Sinking Fund, and Interest Fund. The provisions of the 1945 Constitution which authorize the levying of school taxes do not, as did the 1875 Constitution, indicate the specific purposes for which taxes may be levied. There appears to be a general broad authorization leaving to the General Assembly the power to indicate the purposes for which taxes may be levied within the limitations prescribed by the Constitution.

In view of these court decisions, the comparisons in the wording of the corresponding sections, and the complete omission of Section 10359, which heretofore had provided for the increase of a tax levy for erecting school houses and for similar purposes, we are led to the conclusion that the Legislature is presumed to have known the law when they provided these new sections of Senate Bill No. 208. Therefore, when they omitted the words "school purposes" and added the words "purpose" and "for each purpose," as we have pointed out above, the Legislature

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intended for Section 10358 of Senate Bill No. 208 to include not only a levy for school purposes but also for other purposes, such as purchasing a school site, erecting a school building and furnishing the same.

CONCLUSION

It is, therefore, the opinion of this department that the provisions as set out in Senate Bill No. 208, enacted for implementing the new Constitution, make it possible for school districts to authorize and levy a building fund tax for the purpose of purchasing school building sites, buying or erecting school buildings and repairing and furnishing the same.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR  
Attorney General

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