

SCHOOLS:) A school board may use the funds realized from
ELECTIONS:) a bond issue only for the purpose for which the
BONDS:) electors of the school district voted the issue.
A proposition to change or modify the purpose of
the fund cannot be thereafter submitted to the
voters.

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Honorable L. Clark McNeill
Prosecuting Attorney
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Salem, Missouri



Dear Sir:

Your recent opinion request dated March 21, 1949, reads as follows:

"The Salem School District voted a bond issue three years ago for the expressed purpose of building an addition to an existing grade school building. This purpose was set out in the call for the election and in the notice of the election published in the local newspapers.

"At that time, the money was not actually used because the school board felt that construction prices were too high and that it would be better to wait a time. Since that time it appears that it might be more desirable to build a new building on a different location for a ward school, rather than place an addition onto the old building which will continue in use.

"The board is under the impression that they can not use the funds raised by the bond issue for any purpose other than that for which it was voted by the people, but we want to know further if there is some way in which it can be converted to the new purpose and the thought is that a new proposition might be submitted to the people for the purpose of securing a vote as to whether or not the money could be used for the new purpose. Can the change in purpose be effected in this manner and by what majority would it be necessary that the proposition carry?

"If this can not be done, would it be possible for a new bond issue to be submitted based upon

the new purpose, so that the old bonds could be retired. All of the questions come back to this idea, if the people of the district want their money spent for the new building at the new location, rather than for an addition to the old building, what procedure can be followed to accomplish that purpose."

After the school district election, the district board was authorized to borrow money and issue bonds for the express purpose of building an addition to an existing school building. The bond issue was effected, a fund was created, and this fund as yet has not been used. The question presented is whether this fund may be used for the purpose of building another school building at a new site, abandoning the purpose proposed at the time of the election which authorized the bond issue.

The School Board has authority and can utilize this fund only for the purpose for which it was created. As stated in the case of *Horsfall v. School District, City of Salem*, 143 Mo. App., 541, 1.c. 544, 128 S.W. 33:

* * * "As to the intended use of the money, it is sufficient to say that the order of the board providing for the election and the notice of election provide only for the issuing of bonds in the sum of twenty-five thousand dollars for the purpose of erecting a high school building, and the board of directors have no authority to use any of the money they realize from the sale of these bonds for any other purpose. The notice of election notified the voters that this money was to be used for the purpose of erecting a high school building, and they, having voted upon that proposition, the hands of the board are tied, and they cannot use any part of it for the purpose of purchasing a site, nor for paying existing indebtedness, nor for any purpose except that for which it was voted, which is the erection of a high school building."

In the case of *Thompson v. City of St. Louis*, 253 S.W. 969, 1.c. 972, the City of St. Louis was authorized by its voters to

issue bonds to secure funds for the purpose of establishing and constructing a certain boulevard. The court in this case discussed the obligations incurred by the City of St. Louis as follows:

* * * "Through the receipt of the proceeds of the bonds the city incurred certain obligations, to be sure, but they were essentially those that rest upon the custodian of a trust fund. It was bound to see that the fund was applied to the purposes for which it was created and no other, and that in general was the extent of its obligation in the premises." * * * * *

Therefore, it is evident that the School Board can utilize the fund in question only for the purpose for which it was created, and that it has no authority to use the proceeds for the building of a new school at a different site.

Nor would the submission of a new proposition to the voters for a renewal bond issue to retire the existing bonds be of any aid in the matter. Such action would merely create another fund to be used only for the purpose for which it was created, while the prior fund would remain and could be used only as originally authorized.

The only possible way in which the school board might be able to acquire authority to use the fund for a purpose other than that set forth in the original election proposition is to submit to the electors of the district another proposition providing that the original purpose be abandoned and the fund be used for the purpose presently desired. The question is whether this can legally be done.

School Districts are creatures of statute, and as such, have only such rights and powers as given them by statute. There are no Missouri statutes which provide for re-submission of a proposition to the electors of a school district, after a bond issue has been voted, to change the purposes of such bond issue.

It is true that the Iowa Court in Hibbs v. Adam Township, 110 Iowa 306, 81 N. W. 584, held that the right of a district to vote a school tax by necessary implication was also the right to rescind that vote. In this case, however, the rescission vote occurred before the proposed tax had been collected, levied or certified. The court also specifically stated that the district has this right to rescind

only if in so doing they do not interfere with vested rights.

In Benjamin v. District Township of Malaka et al., 50 Iowa 648, a tax to raise money for the building of a school house at a certain designated site had been voted, levied and collected. At l.c., 650, the court said:

* **"After the tax had been collected and this action commenced, the electors, at the annual meeting in 1878, rescinded their previous action in relation to the erection and appropriation for the house in question. By the payment of the taxes levied and collected for the purpose of erecting the house, the plaintiff's right thereto became vested, and no subsequent action of the electors, without his consent, could have the effect of depriving him of such right." * *

In a village election in the State of New York the electors of the village adopted a proposition to construct a certain street and authorize the trustees of the village to issue bonds and raise funds for such construction. The bonds were issued. Thereafter two propositions were submitted at a subsequent election, the first as to whether the trustees shall be authorized and instructed to refrain from contracting for the construction previously voted on, and the second proposition as to whether the construction should be undertaken at another location. The court in People ex rel., Osborn v. Bellport, 196 N.Y. Sup. 459, l.c., 460, said:

* * *"Can proposition I be regarded as a question which may be lawfully decided at an election? That proposition would, in substance, be resubmitting to the electors a proposition upon which they had already voted and adopted. No provision is found in the Village Law for the resubmission of a proposition already adopted. There was an election. The right of the electors is exhausted. There could be no finality to elections, were it possible to resubmit propositions already adopted.

The intent in proposing proposition No. 2 was undoubtedly to find a use for the moneys which had already been raised pursuant to the proposition

which was adopted on March 16, 1920. In addition to the reasons specified above it would seem that the appropriation of the moneys for a purpose other than that for which it was raised would be an illegal and improper diversion of said fund."

Again in Independent School District v. Rosenow, 240, N. W. 649, l.c. 650, 185 Minnesota 201, 79 A. L. R. 434, the court stated:

* * * "We hold therefore that the voters of a school district may, in properly called meeting, rescind the action taken at an earlier election authorizing a bond issue, provided, of course, that the bonds have not been issued in such fashion as to bind the district contractually and beyond its power to withdraw. Had the proposed bond issue now under consideration gone that far, doubtless an injunction against the holding of an election to rescind the authority therefor would have been inescapable. But the state board of investment, acting within its statutory power, has declined to issue the bonds; that is, it has refused to accept final delivery thereof for the very purpose of being at liberty to return them to the district without obligation upon the latter if the proposed election shall be held and the authority first given for the bond issue is thereby rescinded."

CONCLUSION

It is therefore the opinion of this department that after the electors of a school district have authorized the school board to issue bonds for the purpose of erecting an addition to an existing school building and after such bonds have been issued and a fund created, the school board has authority to use this fund only for the purpose for which it was created and there cannot be submitted to the voters a new proposition providing for changes or modifications in the purpose of such fund.

Respectfully submitted,

APPROVED:

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RHV:p