

SCHOOLS:
TAXATION:

An increased tax rate as authorized by a vote of the residents of a school district and certified to the county clerk after taxes have already been extended should be carried in a supplemental tax book.

FILED
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October 7, 1953

Honorable Donald P. Thomasson
Prosecuting Attorney of
Bollinger County
Marble Hill, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"This past June Mr. Homer F. Williams, former Prosecuting Attorney of Bollinger County, Missouri, wrote to you at the request of the County Clerk concerning a school tax levy which was then being voted upon as to how late a date prior to the thirty-first day of October, the County Clerk might extend the school taxes as certified. At this time the County Clerk of Bollinger County has extended the taxes on the county tax books.

"In your opinion of July 16, prepared by your Assistant, Mr. Will F. Berry, Jr., you state as follows: 'On the other hand, if insufficient time in fact does not remain, or if the prior extension of levies has been made, then we do not think that the County Clerk can be held negligent in the discharge of the duties of his office in failing to extend the duly certified taxes.'

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"The questions are as follows:

"(1) Does the County Clerk have a duty to change the already extended levies giving credit to a new levy being passed by a recent vote of a school district if there is sufficient time to extend a new levy?

"(2) If there is insufficient time to extend the new levy, is the County Clerk authorized to hire additional help to accomplish this prior to October 31?

"(3) If none of the above may be allowed, is there a means whereby school buses may be provided for children in a reorganized school district where there are insufficient funds as a result of a tax levy being passed too late to be extended prior to October 31 of the current year?

"I would appreciate an answer at your earliest convenience in order that some means of transportation may be provided for the children in this reorganized school district."

You first inquire whether a county clerk is under a duty to change the tax book to show an increased tax rate voted by a school district and certified to the county clerk after he has once extended the taxes based upon an estimate of the board of directors supplied earlier. In other words, the taxes (based upon the board of director's estimates) were extended in the tax books prior to the time that the increased tax rate as voted was received by the county clerk.

Under the provisions of Section 165.077, RSMo 1949, boards of directors of each school district are required annually on or before the fifteenth day of May of each year to make an estimate of the anticipated needs and rate of levy required to produce sufficient income to operate the respective schools for the ensuing year.

The Supreme Court of Missouri, in construing this provision, has held that such an estimate after having been filed may be withdrawn and a new estimate and a new proposed tax levy substituted in lieu thereof, if such action be taken prior to the

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original estimate having been acted upon. We direct your attention to the case of Lyons v. School District, 311 Mo. 349, from which we quote:

"* * *The estimate filed under the provisions of section 11142 may be withdrawn, and revised estimates may be substituted, if done before the first estimates were acted upon, and a valid levy may be made upon such revised estimates. State ex rel. v. Phipps, 148 Mo. 31, 49 S. W. 865."

We are of the opinion that the same rule would prevail in the instant case, and since the increased tax rate as directed by the voters of the district was not received by the county clerk until after the prior certification had been acted upon, he is under no duty to change the tax book to show the increased rate prior to the delivery of the book to the collector on or before October 31st. This, of course, would not deprive a district of the additional revenue since we believe that Section 137.300, RSMo 1949, provides for the procedure to be followed when such a situation exists. Said section provides:

"When for any cause there has been a failure to levy the state, county, school or other taxes, or any portion thereof, or to extend and authenticate the same for the use of the collector, or to make out and deliver to the collector a proper tax book for the collection of the same, as required by law, in any county for any year or years, the clerk of the county court of such county for the time being, when so required for such state taxes by the state tax commission, and for such county, school or other taxes by the county court, shall make a supplement tax book for such year or years. Such supplemental tax book shall be made upon the assessments for the year or years for which the taxes should have been levied, or where there has been a failure to assess the property, upon the assessment made as required by section 137.295, the taxes for each year to be in a separate book and to be levied for such state, county, school and other taxes, or portions of the same,

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as had failed to be levied and collected at the proper time. In making said supplemental tax book, and in all subsequent proceedings thereon, the county court, clerk of the same and the collector shall be governed by the same law as is now or at the time then being or may be in force for the same duties, and shall receive the same compensation as is now or at the time then being or may be provided by law for similar duties; provided, that whenever such taxes or any portion of them shall have been paid upon defective or illegal tax books, the amounts so paid shall not be charged in such supplemental tax books, and when any such taxes have been paid in full upon any property, the same, with the description of said property and the name of the owner thereof, shall be omitted from such supplemental tax book."

In view of the above noted provisions, the residents of the school district will be liable for the payment of the tax voted, inasmuch as the county clerk of the county would be required to prepare a supplement tax book for the use of a county collector upon which the tax levy voted by the district would be properly and subsequently collected.

Having answered your first question in the negative, we do not deem it necessary to answer the following two questions.

CONCLUSION

Therefore it is the opinion of this office that a county clerk is under no duty to change taxes already extended on the tax book based upon the estimate of the board of directors to show an increased tax voted by the district and submitted to the county clerk subsequent to such extension, but that the increased tax would properly appear in a supplemental tax book prepared by the county clerk under the circumstances and in the method provided under Section 137.300, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General

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