

SCHOOLS: Section 11(c), Article X of the 1945 Missouri
SCHOOL TAX LEVIES: Constitution, as amended, and Section 165.080,
CONSTITUTIONAL LAW: RSMo 1959, do not require that all proposed
TAXATION: tax rate increases for school purposes be
ELECTIONS: submitted to the voters in one single
proposition.

April 4, 1961



Honorable F. Neil Aschemeyer
Member, House of Representatives
House Post Office
Jefferson City, Missouri

Dear Mr. Aschemeyer:

This is in answer to your request for an Attorney General's opinion concerning House Bill No. 39 and Section 11 of Article X of the Missouri Constitution, which opinion request reads as follows:

"This letter will confirm our telephone conversation of this date. As previously mentioned I have introduced House Bill No. 39 which sets forth the form which I believe propositions for school levies should take. This form would require that the levies for separate funds be voted upon as a total levy rather than as separate levies. It is my view that this is the clear intent of Art. 10, Sec. 11 of the Missouri Constitution.

"It has been brought to my attention that in several instances separate funds have been voted upon separately. Sec. 165.080 RSMo 1959 is certainly subject to the construction that this may be done wherein the statute provides that the vote for any purpose shall be certified to the clerk or secretary of the school district. While in some instances such a practice would present no difficulty, in many others the result would be utter chaos. Let us suppose, for example, that three funds were voted upon separately which together would exceed \$3 but no two of which when considered together

Honorable F. Neil Aschemeyer

would exceed \$3. Assume further that upon a separate vote on these funds that two of the funds receive a simple majority while the third receives a two-thirds majority. It is my thought that in such a situation that the levy with respect to each of the three separate funds have all failed for the reason that taken together the three funds exceeded \$3 and each required a two-thirds majority. What other reasonable construction could be placed upon the language with respect to the 'total levy' as provided in Art. 10, Sec. 11 of the Constitution?

"However, if Sec. 165.080 is authority for voting upon these funds separately the aforementioned vote would be subject to three other possible interpretations. Since two of the funds taken together would not exceed \$3 and received a simple majority you could argue that these passed. You could also argue that the third fund which received a two-thirds majority should under any circumstances be considered as having passed. A third construction which is obviously strained would be that the two funds which taken together would not exceed \$3 and received a simple majority both passed, and that the fund which received a two-thirds majority passed because that was the fund which pushed the total over \$3."

We will first consider the constitutional provisions involved. Section 11(b) of Article X of the Constitution of Missouri, 1945, provides as follows:

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

For municipalities - one dollar on the hundred dollars assessed valuation;

Honorable F. Neil Aschemeyer

For counties - thirty-five cents on the hundred dollars assessed valuation in counties having three hundred million dollars, or more, assessed valuation, and fifty cents on the hundred dollars assessed valuation in all other counties;

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) of Article X of the Constitution of Missouri, 1945, provides methods of increasing the tax rate within certain limits, and reads as follows:

"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 in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed one year, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided in school districts in cities of seventy-five thousand inhabitants or over the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed two years, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon

Honorable F. Neil Aschemeyer

shall vote therefor; provided, that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

This office issued an opinion on March 8, 1951, to Honorable Hubert Wheeler, Commissioner of Education, a copy of which is enclosed for your information, in which it is stated that:

"In reading the above constitutional provision it appears that there are now two methods by which a school tax levy may be increased above the constitutional limit. First, by a two-thirds vote of the qualified voters voting in favor thereof any amount of tax may be levied for a school purpose for a period not to exceed four years, and, second, by a majority vote of the qualified voters voting in favor thereof a tax may be levied for school taxes not to exceed three times the constitutional limit and for a period not to exceed one year, and in school districts in cities of 75,000 inhabitants or over for a period of two years."

In your opinion request you state that it is your view that it is the clear intent of Section 11 of Article X of the Missouri Constitution to require that the levies for separate funds be voted on as a total levy rather than as separate levies. As I understand the question asked in your opinion request, it is whether the various proposed increases in the rate of taxation for separate purposes or funds must be voted upon in one single proposition or whether they can be submitted in more than one proposition for the approval or rejection by the voters.

The theory that one rate of taxation applies and one single proposition should be submitted runs into difficulty

Honorable F. Neil Aschemeyer

when considered in the light of all the requirements of Section 11(c) of Article X of the Constitution, quoted above, and particularly that part of said section which requires that the "rate period of levy and the purpose of the increase" are to be submitted to a vote (in considering this portion of the Constitution we read it as though there were a comma between the word "rate" and the word "period"). The difficulty lies in the fact that neither the rate, the period of levy, nor the purpose, is singular. The rate can be within three times the constitutional limit when approved by a majority vote, or it can be in excess of three times the constitutional limit when passed by a two-thirds majority vote. The period of levy can be one year with a majority vote (two years in districts in cities of 75,000 inhabitants or over), or it can be up to four years with a two-thirds majority vote. The purpose can be any one, or a combination of several, or all of the funds specified in Section 165.110, RSMo 1959. Actually, there are hundreds of variations in the rates, terms of years and purposes which could be submitted to the voters, and yet all of the rates and propositions validly passed by the voters are combined to make the "total levy." Thus, the one rate theory of Section 11(b) is carried over into Section 11(c) in the words "total levy," and the one rate of taxation is actually the total levy, and the total levy is a combination of all the rates which have been legally established and certified to the county clerk, whether there is one single rate for one year or a combination of several excess rates for various terms of years and passed by a majority and a two-thirds majority vote over the constitutional limits. Section 11(c) provides for the possibility of several different rates for various terms of years. All these rates are included in the total levy. In Section 11(c), the Constitution is silent as to the form of proposal, the singleness or multiplicity of proposals, and the methods of submission to the voters. It neither prohibits nor requires the submission of a proposal as a total levy or as separate individual levies. Prior to the amendment of Section 11(c) in 1950, there were at least two methods of submitting a proposition for a school tax increase to the voters. In State ex rel. Thorp v. Phipps, 148 Mo. 31, the information given to the voters voting on a tax levy for more than one school purpose was as follows, l.c. 34:

" * * * to vote on a proposition to levy 100 cents on the \$100 assessed valuation of the district for school purposes; 85

Honorable F. Neill Aschemeyer

cents of said 100 cents to be applied for teachers' fund and 15 cents of said 100 cents to be applied for incidental fund.
* * *!"

Under this case, one proposal was satisfactory.

In Peter v. Kaufmann, 38 SW2d 1062, there were two separate propositions submitted to the voters, and the court said, *Id.* 1065:

"There is nothing to suggest that any voter was in any way deceived or misled by the action taken by the school board or by the notices posted or the ballots used at the election. The voters understood the propositions submitted and the will of the voters was ascertained. Jacobs v. Cauthorn, 293 Mo. 154, 238 S.W. 443. The result of the election was as follows:

'For 100 cents building levy	149 votes
'Against 100 cents building levy ...	44 votes
'For 35 cents excess levy	171 votes
'Against 35 cents excess levy	20 votes.'

"We therefore overruled plaintiff's contentions as to these matters."

Under this case, two separate proposals were satisfactory.

Section 11(c) of Article X of the Constitution of Missouri, 1945, requires the "rate period of levy and the purpose of the increase" to be submitted to a vote, and it provides for more than one purpose, more than one term of years, and more than one excess rate over the constitutional limit. Thus, if the rate, purpose, and term of years conforming to the facts of a situation can all be included in one proposal for submission to the voters, such a proposition is satisfactory. This is the holding of the previous opinion of this office of March 8, 1951, referred to above. But we must go beyond the holding of the previous opinion and say that if various rates for several different purposes and for different terms of years, or more than one different excess rate over the constitutional limit and requiring both a majority vote and a two-thirds majority vote for approval, are decided to be submitted to the voters under a given fact situation, more than one proposition would be satisfactory.

Honorable F. Neil Aschemeyer

We thus place the question of the form of proposal of an excess rate under Section 11(c) of Article X of the Missouri Constitution, where it really belongs, i.e., it must conform to the facts of each individual situation and reasonably present the various proposals to the voters so that they can exercise their right of choice of approval or rejection on each different proposal. The validity of each proposal must stand or fall on the test of whether or not it conforms to the facts of each situation and whether that fact situation is within the constitutional limit and receives the necessary majority vote or two-thirds majority vote of the people. In any event, the voters are entitled to make their choice of approving or rejecting an excess rate which is required to be submitted to them by Section 11(c) of Article X of the Missouri Constitution. In approving or rejecting each separate proposed excess rate they are thereby approving or rejecting the total levy, which total levy is a combination of all the various rates, purposes and terms of years which are approved by the necessary majority of the voters.

It is thus concluded that Section 11 of Article X of the Constitution of Missouri, 1945, does not require that all proposed tax rates for school purposes be submitted to the voters in one single proposition.

Section 165.080, RSMo 1959, as it is now in effect, was passed to implement the provisions of Section 11 of Article X of the Missouri Constitution, as amended, and this section provides as follows:

"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, 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

Honorable F. Neil Aschemeyer

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 165.200; and if the necessary majority of the qualified voters voting thereon, as required by article X, section 11 of the constitution, 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."

This section as it now is recognizes the one rate of taxation in the "total levy" and in its provision "to increase the annual rate of taxation." This section also recognizes the possibility of different levies and separate propositions in submitting the total levy to the voters, at least in certain instances. In the language of that section, it requires that the school board shall submit any proposed tax increase to the voters, "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 said section further provides, "if the necessary majority of the qualified voters voting thereon, as required by article X, section 11 of the constitution, shall favor the proposed increase for any purpose." Under this language the board must specify separately the rate, each purpose and the number of years for each proposed excess rate to be submitted to the voters. The crux of the question asked in your

Honorable F. Neil Aschemeyer

letter is whether there should be one single proposition or whether more than one proposal is permitted. Section 165.080, RSMo 1959, does not specifically require one or a multiplicity of proposals. It is silent as to the form of the proposal. The reasoning in favor of both a single proposition and multiple propositions, as applied to Section 11(c) of Article X of the Constitution and above set forth, applies with equal vigor to this section of the statutes. Section 165.080 is even more insistent in its language in favor of the submission of more than one proposition when the facts of the situation call for it, in the language of the section which provides that the school 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 the language which further provides that if the voters "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 to the county court. Using the reasoning as applied to the Constitution and the stronger language of the statute, we arrive at the same conclusion respecting Section 165.080, RSMo 1959, as we did with respect to Section 11 of Article X of the Constitution, namely, that this section does not require that all proposed tax rate increases for school purposes be submitted to the voters in one single proposition. The facts of each situation will determine whether one or more than one proposition will suffice.

CONCLUSION

It is the opinion of this office that Section 11(c) of Article X of the Constitution of Missouri, 1945, and Section 165.080, RSMo 1959, do not require that all proposed tax rate increases for school purposes be submitted to the voters in one single proposition.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Wayne W. Waldo.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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Enc.