

SCHOOLS:
TAXATION (SCHOOLS):

A school district may adopt, by the necessary majority required by the Constitution, a proposal to further increase the rate of taxation for a given year or years beyond the rate previously authorized by popular vote for said year or years. Should a proposal for further increase in the rate

fail to get the necessary majority required, the rate existing at the time of said vote on the proposed further increase is not repealed thereby, but continues in effect for the term previously authorized by vote.

OPINION NO. 249

September 4, 1969

Honorable Stephan Burns
State Representative
42nd District
10702 Manchester
St. Louis, Missouri 63122



Dear Representative Burns:

This is in response to your request for an opinion from this office with regard to the following inquiry:

"Provided a 2/3 vote is obtained and a school tax rate is thereby adopted for four years, cannot a school district by a similar 2/3 vote at any time in that four year period, vote to amend the previous vote in an amount of increase as needed? Would the voters not have the same power as enjoyed by the Assembly; namely that power to amend without repealing the existing law?"

Section 11(b) of Article X of the Constitution of Missouri establishes the maximum annual rates of taxation for school districts which can be levied without voter approval. Section 11(c) of the Constitution provides that under certain specified circumstances the rates of taxation as established in Section 11(b) of Article X of the Constitution may be increased by popular vote. In pertinent part Section 11(c) of Article X of the Constitution provides:

"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 therefore; 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 75,000 inhabitants

Honorable Stephan Burns

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 shall vote therefor. . ."

Section 164.021, RSMo Supp. 1967, provides in part as follows:

"1. Whenever it becomes necessary, in the judgment of the school board of any school district in the state, to increase the annual rate of taxation beyond the rate authorized by the constitution for district purposes without voter approval. . . the board shall determine the rate of taxation necessary to be levied in excess of the authorized rate, and the purpose or purposes for which the 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. The proposal may provide for a greater rate of increase in one or more years than in others and acceptance of a proposal to increase the tax levy for any year or years shall not prevent the board from subsequently proposing a further increase in the tax levy for the same year or years.

4. If the necessary majority of the voters voting thereon, as required by Article X, Section 11, of the constitution, favor the proposed increase, the result of the vote, including the rate of taxation so voted in the district for each purpose, and the number of years the rate is to be effective shall be certified by the clerk of the district to the clerk of the court of the proper county, who, on receipt thereof, shall assess the amount so certified against all taxable property of the school district as provided by law. . . (Emphasis supplied).

The language of section 164.021, expressly authorizes the board to propose a "further increase in the tax levy" after the levy has already been increased by popular vote beyond the rate authorized by the constitution without a vote. As we understand your question, you ask: If the board chooses to propose a "further increase in the tax levy" for any year or years for which a prior increase has already been voted, and that proposal fails to get the necessary majority of the votes, does the increase previously voted for said year or years remain in effect, or does the unsuccessful attempt to pass a further increase in the levy work as a repeal of the initial increase, thus leaving the school district with only the constitutional maximum authorization for levy? It is the view of this office for reasons stated below that a proposal further to increase the levy for any appropriate year or years is in the nature of an

Honorable Stephan Burns

effort to amend the existing levy which has already received the necessary voter approval, and that a failure to obtain for the proposal the necessary majority as required by the constitution in no way operates as a repeal of the existing law.¹ The result of such failure is simply that the existing levy, previously adopted by popular vote, continues in effect.

The terminology used in section 164.021 certainly indicates that a proposal such as is involved in your question is to be viewed as being in the nature of an amendment to the existing levy, rather than a repeal and an attempt to enact an entirely new levy in lieu thereof. The first sentence of subsection 1 of section 164.021 deals with the initial increase in the levy which can be made with voter approval. Reference to that increase is phrased in terms of "to increase the annual rate of taxation beyond the rate authorized by the constitution" and "the rate of taxation necessary to be levied in excess of the authorized rate." (Emphasis supplied). Conceptually, the initial increase which may be adopted by popular vote is an amount which may be added to the base or foundation which is the constitutionally authorized rate. Contrasted with this is the second sentence of subsection 1 dealing with further increases, the matter under consideration in this opinion. Significantly the reference to this latter increase is not in terms of the constitutionally authorized rate, but rather is in terms of "a further increase in the tax levy" subsequent to an "acceptance of a proposal to increase the tax levy." The apparent thrust of this latter language is that upon the then existing levy structure (composed of the constitutional maximum plus the initial increase by popular vote) may be placed an additional increase if the necessary majority votes for it. Viewed in these terms, mere failure to adopt a proposal which would make the addition to the then existing foundation ought not result in the destruction of a portion of that foundation. Stated another way, the proposed point of departure being the then existing levy structure, failure to get the votes necessary to make the departure means that in terms of the levy, the district is at exactly the same point after the election as it was immediately prior to the election.

Additionally, to take the view that failure to adopt a proposal for further increase would cause the levy to revert to the constitutional maximum, would be to make a real trap of the provisions regarding further increases. An illustration in this regard is appropriate. Assume that a city school district has obtained the necessary majority required by the constitution to increase the levy beyond the constitutional maximum for four years, 1969, 1970, 1971, and 1972, the rates for these respective years being 3.80, 3.80, 3.85 and 3.85. If thereafter, the board of that district decided that for the year 1970 an additional .01 would be required to add a new program of instruction, it would no doubt examine section 164.021, and find that it has authority to go back to the voters to seek approval of this proposed further increase for the year 1970.

The proposal to further increase the 1970 rate by .01 to 3.81 might fail to get the necessary majority (a two-thirds majority in this case). To treat the proposal for a further increase as a repeal and an attempt to enact in lieu of the existing rate, would mean that for at least the year 1970, and for that matter, perhaps for the years 1969-72, the rate would, upon the announcement of the election results revert to the constitutional maximum, 1.25. Surely creating a trap such as

¹The "necessary majority" may be either a simple majority or a two-thirds majority depending upon the rate to be voted upon and the proposed duration of that rate. Op. Atty. Gen. No. 73, Blackwell, 2-15-63. We enclose a copy of such opinion.

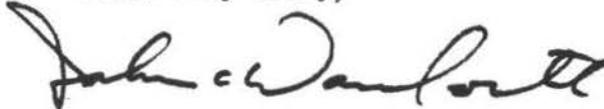
Honorable Stephan Burns

this was not the intent of the legislature in enacting this section. Rather its intent appears to be to grant meaningful flexibility to school districts within the constitutional framework.

CONCLUSION

It is the opinion of this office that a school district may adopt, by the necessary majority required by the Constitution, a proposal to further increase the rate of taxation for a given year or years beyond the rate previously authorized by popular vote for said year or years. It is further the view of this office that should a proposal for further increase in the rate fail to get the necessary majority required, the rate existing at the time of said vote on the proposed further increase is not repealed thereby, but continues in effect for the term previously authorized by popular vote for said year or years.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name and title.

JOHN C. DANFORTH
Attorney General

Enclosure: No. 73, Blackwell
February 15, 1963