

SCHOOLS:
TAXATION (SCHOOLS):
CONSTITUTIONAL LAW:

Pursuant to the terms of Article X, Section 11(c) of the Missouri Constitution and Section 164.021, RSMo 1967 Supp., a tax rate approved by two-thirds of the qualified electors voting thereon pur-

suant to the first clause of Section 11(c) is a valid increase of the maximum rate of taxation permitted by Section 11(b) of Article X of the Missouri Constitution for the period authorized by the voters (not to exceed four years) and, at the end of the authorized period (not to exceed four years), the increased tax rate expires. The rate for the next succeeding year will be the rate imposed by the school board of the district which cannot exceed the limitations contained in Section 11(b), Article X, Missouri Constitution unless the qualified voters of the district have authorized an increase pursuant to the provisions of Section 11(c) Article X, Missouri Constitution and Section 164.021, RSMo 1967 Supp. With reference to the Kirkwood School District R-7, the tax rate of \$4.47 approved by the voters in 1969, is effective for only one year. The tax rate for subsequent years will be limited by provisions of Section 11(b), Article X, Missouri Constitution, to a maximum of \$1.25 on hundred dollars assessed valuation unless the voters of the district authorize an increase in this basic rate pursuant to the provisions of Section 11(c) of Article X, Missouri Constitution and Section 164.021, RSMo 1967 Supp.

OPINION NO. 365

June 5, 1970

Honorable Harlan A. Gould
State Representative
Forty-fifth District
10 Adams Lane
Kirkwood, Missouri 63122



Dear Representative Gould:

This official opinion is issued in response to your request for a ruling on the following question:

"Does a school district which has been operating its schools on a tax rate, for a period of one year, obtained by two-thirds voter approval, revert to such rate if its proposal for an increased rate for a subse-

Honorable Harlan A. Gould

quent year fails to get the necessary majority for approval, or does such district's operating levy revert to the \$1.25 which the Board can levy without voter approval?"

As background for this inquiry you provided the following information:

"The Kirkwood School District R-7 is a six-director district which has submitted a proposal to increase the annual rate of taxation beyond the rate authorized by the Constitution for District purposes without voter approval at three elections and the fourth such election is scheduled on June 16. The levy under which said District is operating its schools during the current year was a one-year levy approved by a two-thirds majority of the voters of the School District last year. Information has been given to the residents of the District to the effect that the continued defeat of the proposed school levy would not cause the District's operating levy to revert to the \$1.25, which it can levy without voter authorization, but rather that the levy would revert to that which had been voted for the previous year. That contention is said to be based upon Opinion No. 249 issued by your office on September 4, 1969, to Honorable Stephen Burns, the State Representative of the 42nd District. Counsel for the District do not believe that your opinion so held, but the confusion caused by that interpretation of your Opinion can only be corrected, it is believed, by an official Opinion from your office relative to the exact factual situation in which the Kirkwood District and other St. Louis County Districts find themselves. This matter is of utmost urgency in that the tax rate proposal will be again submitted to the voters of this District on June 16, 1970, and it is imperative that the confusion which has resulted from what is believed to be a misinterpretation of your September 4, 1969 Opinion be settled promptly."

We have been advised by the attorneys for the Kirkwood School District R-7 that on April 29, 1969, the voters of the district authorized for one year a tax rate of \$3.22 in excess of the annual

Honorable Harlan A. Gould

rate of \$1.25 permitted by the Missouri Constitution without voter approval. When added to a levy of \$.52 for debt service, the total tax rate for the district for the 1969-70 school year was \$4.99. It should be emphasized that the proposal to increase the tax rate approved by the voters of the district in 1969 expressly provided that the \$4.47 operating levy was for only one year. Therefore, we understand your inquiry to be whether the \$4.47 tax rate authorized in 1969 for the 1969-70 school year will remain in effect for the 1970-71 school year if the voters fail to approve any increase over the maximum \$1.25 rate which the school board of the district can levy without voter approval.

Article X, Section 11(b) of the Missouri Constitution limits local tax rates including rates assessed by school districts. The provisions pertaining to school districts are 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 school districts formed of cities and towns, including the school district of the city of St. Louis--one dollar and twenty-five cents on the hundred dollars assessed valuation;

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

Assuming that the Kirkwood School District R-7 is a school district formed of a city or town, a maximum tax rate of \$1.25 on the hundred dollars assessed valuation could be levied without voter approval. However, if the Kirkwood School District desires to assess a higher tax, reference must be had to Article X, Section 11(c), Missouri Constitution, which provides as follows:

"§11(c). INCREASE OF TAX RATE BY POPULAR VOTE

"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

Honorable Harlan A. Gould

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 75,000 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 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."

The \$4.47 tax rate authorized by the voters of the Kirkwood R-7 School District in 1969, is more than three times the limit of \$1.25 specified in Article X, Section 11(b). Therefore, the provisions of Section 11(c) providing for a majority vote on a levy not exceeding three times the limit specified in Section 11(b) were not applicable. The \$4.47 tax rate had to receive and did receive the approval of two-thirds of the qualified electors voting on the proposition as required in the first clause of Article X, Section 11(c).

Section 164.021, RSMo 1967 Supp., implements the provisions of Section 11(c) and provides in part as follows:

"1. Whenever it becomes necessary, in the judgment of the school board of any

Honorable Harlan A. Gould

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, or when voters of the district equal in number to ten per cent or more of the number of votes cast for the member of the school board receiving the greater number of votes cast at the last school election in the district petition the board, in writing, for such an increase of the rate, 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. In metropolitan districts the certification shall be made by the secretary of the board as required by law."

Where the language of a statute or constitutional provision is plain and admits of but one meaning, there is no room for construction.

Honorable Harlan Gould

Rathjen v. Reorganized School District R-2, 365 Mo. 518, 284 S.W.2d 516, 523 (Banc, 1955). It is our belief that the provisions of Section 11(c), Article X, Missouri Constitution, and Section 164.021, RSMo 1967 Supp., plainly provide that a tax rate over and above the basic rates set forth in Section 11(b), Article X, Missouri Constitution, is a valid tax rate only for the period authorized by the voters of the district. In Section 11(c), the basic rates of taxation may be increased for a period "not to exceed four years". In paragraph 1 of Section 164.021, RSMo 1967 Supp., the proposal to increase the tax rate must state "the number of years, not in excess of four, for which each proposed excess rate is to be effective". Paragraph 4 of Section 164.021 provides that if the necessary majority of the voters approve the proposed increase, "the result of the vote including . . . the number of years the rate is to be effective . . ." shall be certified to the clerk of the proper county. Furthermore, in the suggested form of proposal and ballot for a tax rate increase found in Section 164.031, RSMo 1967 Supp., a blank is provided for insertion of the number of years the proposed rate will be levied. The language of these constitutional and statutory provisions admit of but one meaning -- a tax rate increase is effective only for the period of time (four years or less) that the voters authorize.

However, if we assume that there is some ambiguity or conflict in Section 11(c) which would require the courts to construe it, the fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and to the people who adopted it. Rathjen v. Reorganized School District R-2, supra, at 524. In this instance, the framers were the members of the Sixty-fifth General Assembly of Missouri since Section 11(c) in its entirety was repealed and a new section adopted in lieu thereof. The amendment was submitted by Senate Joint Resolution No. 3, Sixty-fifth General Assembly. Laws of Missouri, 1949, p. 642. Such constitutional amendment was adopted by the voters of Missouri at the general election November 7, 1950. However, the first clause of Section 11(c) was included in the original Section 11(c) as adopted by the Constitutional Convention of 1943-44 and approved by the people of the State of Missouri in 1945. Therefore, it is relevant to an inquiry into the meaning of the first clause of Section 11(c), to inquire into the intent of the members of the Constitutional Convention in approving that clause. See Rathjen v. Reorganized School District R-2, supra, at 525.

The report of the Committee on Taxation-Levy, Assessment and Collection No. 10, File 19, proposed a Section 11 which contained the following proviso:

"Provided, that in all municipalities, counties and school districts, the rate

Honorable Harlan A. Gould

of taxation as herein limited, or as further limited by the General Assembly, may be increased for their respective purposes when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote and two-thirds of the qualified voters voting on such proposition shall vote therefor; and, provided further, that any municipality, 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, and other public purposes." Verbatim Stenotype Transcription of the Debates of the 1943-44 Constitutional Convention of Missouri, Part 10, page 4735.

During the debates on Section 11, the following exchange took place between Mr. Shepley, Chairman of the Committee on Taxation, and Mr. Righter:

"MR. SHEPLEY: Mr. President, there is just one - I don't intend to debate this at all. I know that the Convention will be glad to have had the reaction of the delegates from the community that is to be affected. My own purpose, and my only purpose in rising is this. Mr. Righter, in his remarks referred to my understanding of it. I have assumed that in the section, the proviso giving the two-thirds of those voting at the election, a right to exceed the rates, become a permanent thing and there is no provision by which they could ever reduce them. Now, that is not at all our intention and it is not our understanding of the words as we have used them. I call your attention to the fact that they are virtually identical with the words used in the present Constitution in which the voters of the school districts are permitted within limits, to vote an increased rate and as we all know, there is nothing permanent about those increased rates so authorized that complaint has been due to the fact that they have to vote and vote and vote and keep on voting year after year because they are not permanent, so if there is any question about that, I would certainly want

Honorable Harlan A. Gould

to have it cleared up, but I am confident that the authorization contained in the Committee Report does not and would not result in a permanent increase that would be there forever and never be capable of being reduced. As a matter of fact, according to our understanding, it is only good for the period for which it is authorized, which is ordinarily the fiscal period as to which they are then voting the rate.

MR. RIGHTER: Mr. President, may I inquire of Mr. Shepley?

MR. SHEPLEY: I yield.

MR. RIGHTER: Mr. Shepley, suppose that under this section, the people of a certain county vote that the rate instead of thirty-five cents, shall be a dollar? Well now, does that rate so voted only, is it your impression that that vote so voted only continues until the following year?

MR. SHEPLEY: During the fiscal period for which the appropriation or rates are about to be established. Yes, that would be my construction.

MR. RIGHTER: Is there some language in the section which is expressly to that effect?

MR. SHEPLEY: No, but I think it has been, the general construction. You don't think there has ever been an exemption to it, Mr. Righter, that what they are voting on at the time is what will the school rates become for this coming fiscal period. In other words, you are about to have the rates established for the ensuing period and the voters are asked to authorize an increased rate for the schools and they vote on that and I am satisfied by the fact that they have regular annual elections in some cases where they only vote every two years, they vote every two years on it, but we were advised in the Committee that it only stands between elections and if they want to enjoy that increase again, they have to vote on it again and it is resubmitted. Now, I think Mr. Potter, as a matter of fact, has an amendment. I don't know whether it touches that or not. I believe it does." Id. 4797-4798.

Honorable Harlan A. Gould

Subsequently, Mr. Mayer offered an amendment to Section 11 which was intended to clarify the situation discussed by Mr. Shepley and Mr. Righter. The debate on this amendment is instructive as to the intention of the Constitutional Convention on the period of time a tax rate increased voted by the people is effective:

"MR. MAYER: I have an amendment.

(Amendment submitted and read as follows:)

AMENDMENT NO. 24. Amend File No. 19, Page 6, Section 11 as amended, line 29, by inserting after the word 'purposes' where said word appears in line 29 the following words: 'for a period not to exceed four years.'

PRESIDENT: Judge Mayer, that word is 'purpose', not 'purposes'.

MR. MAYER: It is 'purposes' in that line.

PRESIDENT: You are right. I was looking at the other. Do you move the adoption of the amendment?

MR. MAYER: I move the adoption of the amendment.

PRESIDENT: Is there a second?

(Motion was seconded by Mr. Hemphill.)

MR. MAYER: Mr. President, I should just simply like to state the purpose of the amendment which is to limit these additional levies to a period of four years. It could be less, of course, if the people wanted to do it, but it could not be for a longer period than four years. I assume that most of these elections to increase the levy would be held along with the general elections, so it would be four years from the time of the general election and it is just a limitation on the time.

MR. PHILLIPS (OF JACKSON): May I interrogate Judge Mayer?

PRESIDENT: Judge, will you yield?

Honorable Harlan A. Gould

MR. MAYER: Yes, sir.

MR. PHILLIPS (OF JACKSON): Judge, a few years ago the levy for the school districts of Kansas City and for St. Joseph was for a period of two years and my recollection is that an amendment or a bill was introduced which authorized the levying for not to exceed four years. Now, under the present law St. Joseph as well as Kansas City may submit the levy to the people for one year, two years, three years, or four years. Isn't that correct?

MR. MAYER: Yes.

MR. PHILLIPS (OF JACKSON): And four years is an adequate period generally for a large city to predict its levy?

MR. MAYER: That's right.

MR. PHILLIPS (OF JACKSON): They would make the Constitution then conform very largely to the statute or putting it conversely, the statute could not prescribe a longer period than the Constitution?

MR. MAYER: That's right. Mr. Phillips, I introduced the amendment because some fear was expressed that if one of these levies was voted it could never be unvoted and might be perpetual.

MR. PHILLIPS (OF JACKSON): I think it is a good amendment.

MR. MAYER: To make it clear, I just introduced it for four years." Id. at 4811.

* * *

"MR. SHEPLEY: Mr. President, I would simply like to say this amendment was discussed by Mr. Mayer with myself as Chairman of the Committee during the recess, and while I haven't polled the Committee, I am satisfied that we are all entirely in favor of this

Honorable Harlan A. Gould

amendment, and I think it will lose any doubt that might exist that was raised by Mr. Righter, and I think it is a very proper amendment and should be adopted." Id. at 4812.

* * *

"MR. MANLOVE: Judge Mayer, you probably remember that this question was raised in Committee. At the time it seemed to be the consensus of the idea of the Committee that anything the people voted upon themselves that they inherently had the right to rescind that with another vote. Is that right?

MR. MAYER: Yes, there was some talk of that kind, but there has been considerable doubt expressed on the floor, and I thought this would make it clearer.

MR. MANLOVE: Yes, sir, I agree with that. Now, isn't it a fact, though, that our city elections are held for the purpose of voting the school levies throughout the whole state at special school elections in April of each year?

MR. MAYER: Well, they could still vote it for one year or four years. Under the statute they can do that now. This just makes it clear that this constitutional provision does not interfere with the statute. The statute provides they may increase the levy for from one to four years and this just puts a limit of four years on it.

MR. MANLOVE: In other words, it wouldn't be held by inference that the four years, that it held to the four years in any way at all? In other words, the school board in my town might not say, 'Well, we voted that levy and we voted for four years'?

MR. MAYER: No, it says, 'it shall not exceed four years'.

MR. MANLOVE: Yes, sir, well I agree that it is a good amendment. I heartily support it." Id. at 4813.

* * *

Honorable Harlan A. Gould

"PRESIDENT: The question is on Judge Mayer's amendment. As many as favor the amendment, let it be known by saying 'Aye'...Opposed? The ayes have it. The amendment is adopted. Are there other amendments to the section?" Id.

The foregoing is strongly supportive of the conclusion reached above, that an increase in the basic tax rate which is approved by a two-thirds favorable vote of the qualified electors voting thereon is a valid tax rate only for the period authorized by the voters.

Therefore, we conclude that the \$4.47 tax rate approved by the voters of the Kirkwood School District R-7 in 1969, is effective for only one year. A one year increase in the basic tax rate permitted by Section 11(b) is all the voters approved. Upon the expiration of that year, the tax rate for the next year (1970-71 school year) for the district will be limited by Section 11(b) to a maximum of \$1.25 on the hundred dollars assessed valuation unless the voters of the district authorize an increase in the basic rate pursuant to Section 11(c) and Section 164.021.

In your opinion request, reference is made to Opinion No. 249 issued by this office on September 4, 1969, to the Honorable Stephan Burns. The conclusion reached herein is entirely consistent with the opinion reached in Opinion No. 249. The inquiry made of this office by Representative Burns which was answered in Opinion 249, assumed a situation where a school tax rate had been adopted by a two-thirds vote for four years. He inquired whether the voters of a school district could increase the tax rate even further during that four year period. The opinion concluded as follows:

"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." (Emphasis supplied)

Opinion No. 249 concludes that where the voters have authorized an increase in the basic tax rate for four years and a further increase

Honorable Harlan A. Gould

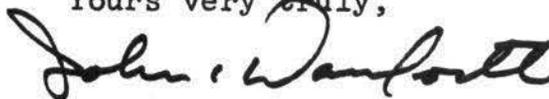
is submitted to the voters and defeated during that four year period, the previously authorized tax rate would continue because the voters had authorized it for a period which had not yet expired. Implicit in Opinion No. 249 is the conclusion that at the end of that four year period the authorization for the increased rate would expire and the maximum rate for the next succeeding year would be as provided in Section 11(b) of Article X unless the voters authorized another increase in the basic rate.

CONCLUSION

Therefore, it is the opinion of this office that pursuant to the terms of Article X, Section 11(c) of the Missouri Constitution and Section 164.021, RSMo 1967 Supp., a tax rate approved by two-thirds of the qualified electors voting thereon pursuant to the first clause of Section 11(c) is a valid increase of the maximum rate of taxation permitted by Section 11(b) of Article X of the Missouri Constitution for the period authorized by the voters (not to exceed four years), and, at the end of the authorized period (not to exceed four years), the increased tax rate expires. The rate for the next succeeding year will be the rate determined by the school board of the district which cannot exceed the limitations contained in Section 11(b), Article X, Missouri Constitution unless the qualified voters of the district have authorized an increase pursuant to the provisions of Section 11(c) Article X, Missouri Constitution and Section 164.021, RSMo 1967 Supp. With reference to the Kirkwood School District R-7, the tax rate of \$4.47 approved by the voters in 1969, is effective for only one year. The tax rate for subsequent years will be limited by the provisions of Section 11(b), Article X, Missouri Constitution, to a maximum of \$1.25 on hundred dollars assessed valuation unless the voters of the district authorize an increase in this basic rate pursuant to the provisions of Section 11(c) of Article X, Missouri Constitution and Section 164.021, RSMo 1967 Supp.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General