

SCHOOLS:

CONSTITUTIONAL LAW:

House Joint Resolution No. 1, Third
Extraordinary Session Seventy-fifth
General Assembly (Constitutional

Amendment No. 4 on ballot November 3, 1970), which enacts a new Section 11(c) of Article X of the Constitution of Missouri, provides that if the board of education of a school district does not submit to the electorate a proposal for a higher tax rate for school purposes after the effective date of the amendment, the last tax rate approved in the district shall continue for the current tax year.

OPINION NO. 546

November 20, 1970

Honorable Robert L. Prange
State Senator, District 14
State Capitol Building
Jefferson City, Missouri 65101



Dear Senator Prange:

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

"If we assume that Constitutional Amendment No. 4 on the ballot for November 3 is passed and that this law would become effective 30 days after the election, would such law be applicable to any school election held before December 5 and, in your opinion, would it be necessary to run another school tax levy after December 5 in order to make that provision of Amendment No. 4 effective?"

House Joint Resolution No. 1, Third Extraordinary Session, Seventy-fifth General Assembly, was Constitutional Amendment No. 4 on the ballot of November 3, 1970. While the official canvass has not been made by the Secretary of State, the unofficial count indicates that this amendment received a majority vote, and, therefore, will go into effect thirty days after the election. Article XII, Section 2(b), Missouri Constitution, 1945.

Constitutional Amendment No. 4 repeals Section 11(c) of Article X, Missouri Constitution, and adopts in its place a new Section 11 (c). When Amendment No. 4 becomes effective, Section 11(c) of Article X will read as follows:

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for

Honorable Robert L. Prange

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, except as herein provided, 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, except as herein provided, 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 in any school district where the board of education is not proposing a higher tax rate for school purposes, the last tax rate approved shall continue and the tax rate need not be submitted to the voters; provided, that in school districts where the qualified voters have voted against a proposed higher tax rate for school purposes, then the rate shall remain at the rate approved in the last previous school election except that the board of education shall be free to resubmit any higher tax rate at any time; provided that any board of education may levy a lower tax rate than approved by the voters as authorized by any provision of this section; and 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

Honorable Robert L. Prange

taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."
(Emphasis supplied)

That portion of Constitutional Amendment No. 4 crucial to this opinion has been underscored.

We assume that your question pertains to the following factual situation: The school board of a six-director school district has prior to the effective date of Constitutional Amendment No. 4 submitted to the voters of the district proposals to increase the rate of taxation in the district and these proposals have been defeated by the voters. Your inquiry is what must the district do after the effective date of Constitutional Amendment No. 4 in order to take advantage of the provisions of that amendment and adopt last year's levy for the current year.

Initially, we must determine whether the underscored language of Constitutional Amendment No. 4 is self-enforcing or whether legislation is necessary to make this language effective. The rule by which it is determined if a constitutional provision is self-executing has been described as follows by the Missouri Supreme Court:

"One of the recognized rules is that a constitutional provision is not self-executing when it merely lays down general principles, but that it is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced, without the aid of a legislative enactment. * * * Another way of stating this general, governing principle is that a constitutional provision is self-executing if there is nothing to be done by the legislature to put it in operation. In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.' 11 Am.Jur., Constitutional Law, § 74, pp. 691, 692. See, also, 16 C.J.S., Constitutional Law,

Honorable Robert L. Prange

§ 48, pp. 98-101. . . ." State ex rel. City of Fulton v. Smith, 355 Mo. 27, 194 S.W.2d 302, 304 (banc 1946)

"The general rule is thus stated in 12 C. J. p. 729:

'It is within the power of those who adopt a constitution to make some of its provisions self-executing, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect. * * *

'Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed.'

"And further, page 730:

'A constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficiency and operation on the legislative will.'" State ex inf. Norman v. Ellis, 325 Mo. 154, 28 S.W.2d 363, 365 (banc 1930)

See also In re V -----, 306 S.W.2d 461, 463 (Mo. banc 1957).

With reference to the underscored wording of Constitutional Amendment No. 4, we do not believe that a statute is necessary to put this clause into effect. ". . . Any statute about the matter must needs follow the precise words or the very substance of the Constitution itself, and no statute which could be passed could clarify the matter in any respect whatever. . . ." State ex inf. Barker v. Duncan, 265 Mo. 26, 175 S.W. 940, 944 (banc 1915). The underscored portion of Amendment No. 4 is not so indefinite as to render it impossible of execution without specific legislative implementation. Furthermore, we believe that the intent of the framers of this language and the intent of those who adopted it was that it would provide immediate relief for the school districts of the state and that its effectiveness would not be dependent on

Honorable Robert L. Prange

legislative action. Therefore, we conclude that the underscored provision of Amendment No. 4 is self-enforcing and becomes effective thirty days after the election at which the amendment was approved.

Constitutional provisions are subject to the same general rules of construction as are statutes. The fundamental purpose in construing constitutional provisions is to ascertain and give effect to the intent of the framers of the provision and the people who adopted it. Rathjen v. Reorganized School District R-II, 365 Mo. 518, 284 S.W.2d 516, 524 (banc 1955). In construing the language of a constitution the words used, unless technical, are to be understood in their usual and ordinary sense. Vanlandingham v. Reorganized School District No. R-IV, 243 S.W.2d 107, 109 (Mo. 1951). Furthermore, a constitutional provision speaks as of its effective date unless the intention is manifest on its face beyond a reasonable doubt that the provision should operate retrospectively. City of Shreveport v. Cole, 129 U.S. 36, 32 L.Ed. 589, 9 S.Ct. 210 (1889); State ex rel Harrison v. Frazier, 98 Mo. 456, 11 S.W. 973 (1889); and State ex rel Scott v. Dircks, 211 Mo. 568, 111 S.W. 1 (1908).

Turning now to the underscored portion of Amendment No. 4, this proviso reads:

" . . . that in any school district where the board of education is not proposing a higher tax rate for school purposes, the last tax rate approved shall continue and the tax rate need not be submitted to the voters; . . ."

A school board "proposes" a higher tax rate by submitting such a "proposal" to the electorate. See Sections 164.021 and 164.031, RSMo 1969. Therefore, we conclude that if a school board, after the effective date of Amendment No. 4, does not propose to the voters of the district an increase in the tax rate for school purposes then the last tax rate approved shall continue and the tax rate need not be submitted for the approval of the electorate.

CONCLUSION

Therefore, it is the conclusion of this office that House Joint Resolution No. 1, Third Extraordinary Session Seventy-fifth General Assembly (Constitutional Amendment No. 4 on ballot November 3, 1970), which enacts a new Section 11(c) of Article X of the Constitution of Missouri, provides that if the board of education of a school district does not submit to the electorate a proposal for a higher tax rate for school purposes after the effective date of the amendment, the last tax rate approved in the district shall continue for the current tax year.

Honorable Robert L. Prange

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

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH
Attorney General