

SCHOOLS: Voters of consolidated school district cannot authorize additional levy of ten cents in excess of One Dollar for repairing and furnishing colored school.

February 28, 1941

Mr. James L. Anding
Attorney at Law
Pacific, Missouri



Dear Sir:

This Department is in receipt of your letter of February 24, wherein you request an opinion as follows:

"Consolidated School District No. 3 of Franklin County, Missouri, at its annual meeting always votes the increased maximum rate of One Dollar on the One Hundred Dollars valuation allowable for school purposes. This year the Board contemplates submitting to the voters of the District a proposition authorizing an additional Ten Cents on the One Hundred Dollars valuation for the purpose of repairing and furnishing the school for colored children maintained by said District. The question is, can this be legally done under the provisions of R. S. Mo. 1939, Sec. 10359?"

You state that the school district, which is a consolidated district, has already voted the maximum rate of One Dollar on the One Hundred Dollars valuation.

Section 11, Article X of the Constitution of Missouri, contains the proviso:

"Provided, the aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, * * *."

This section further contains the provision as follows:

"For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city or school district, voting at such election, shall vote therefor."

Section 10359, R. S. Mo, 1939, provides as follows:

"The board of education or directors of any school district in this state shall, whenever in their judgment it becomes necessary, or they be requested, by a petition of ten taxpayers of any such school district, to increase the annual rate of taxation for the purpose of paying for school building sites, whether the same have been purchased or condemned, for buying or erecting school buildings in such districts, or repairing or furnishing such buildings, or for building, repairing and maintaining foot bridges over running streams, determine the rate of taxation necessary to be levied within the maximum rates

prescribed by the Constitution, and as therein limited for such purposes, and shall submit to the voters of such school district, at an election to be by such board called and held for that purpose, at the usual place for holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board for any of the purposes mentioned in this section, due notice having been given as required by section 10418, and if two-thirds of the qualified voters of such school district, or of such city, town or village forming a school district, voting at said election, shall vote in favor of such increase for the purposes aforesaid, the result of such vote, and the rate of taxation so voted, shall be certified by the secretary or clerk of such board to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess the amount so returned for any or all of the purposes mentioned in this section on all the taxable property, both 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 is provided by law: Provided, that when the proposition to be voted on refers only to repairing or furnishing, or both repairing and furnishing such school building, the proposition shall be deemed to have been carried at the election if a majority of the votes cast are cast in favor of the proposition, where said increase together with amount or amounts levied under Section 10358, Revised Statutes of Missouri, 1939, does not exceed constitutional limitations for school purposes."

The Legislature in 1939 (Laws of 1939, page 701) amended the above section by including the words: "where said increase together with amount or amounts levied under Section 10358 R. S. Mo. 1939, does not exceed constitutional limitations for school purposes."

Section 12, Article X, of the Constitution of Missouri as stated in your suggestions, requires consent of two-thirds of the voters of the school district with exceptions as to certain cities..

We think the decision of State ex rel. Marlowe v. Himmelberger-Harrison Lumber Co., et al., 58 S. W. (2d) 750, is illuminative of the question, where the court held in substance:

"Increased tax rate allowed by Constitution for school district for 'erecting public buildings,' after election therefor, could not be voted for purpose of making repairs or alterations of existing buildings."

We are of the opinion that you are correct in your conclusions regarding the matter and that the voters of the Consolidated School District, under the provisions of Section 11, Article X and of the statute quoted supra, cannot legally authorize the additional levy of ten cents in excess of the one dollar on the hundred dollars valuation for repairing and furnishing the colored school.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

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