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SCHOOLS: A person elected director is entitled to serve if he paid state and county taxes before qualifying.

October 3, 1941

Mr. J. A. Burnside
County Superintendent of Schools
Carrollton, Missouri



Dear Sir:

This department is in receipt of your request for an opinion several days ago, in which you make the following inquiry:

"I have a rural school board member who was elected at the April 1st school election. He had not paid his taxes for 1940 at the time. He paid a personal property tax on April 21, 1941, which covered his personal tax for 1940. He was sworn in within 4 days of the annual meeting and another board member protested the legality of his serving. He paid his tax and was sworn in again by the clerk before another witness on April 21st. Is he eligible to serve as director?"

This question involves an interpretation of Section 10420, R. S. Missouri, 1939. The pertinent part of this section is as follows:

"The government and control of the district shall be vested in a board of directors composed of three members, who shall be citizens of the United States, resident taxpayers of the district, and who shall have paid a state and county tax within one year next

preceding his, her or their election,
and who shall have resided in this
state for one year next preceding his,
her or their election or appointment,
and shall be at least twenty-one years
of age. * * * * *

It appears to be no disqualification of the director in question except as to the payment of taxes. Therefore, we are concerned with the clause, "who shall have paid a state and county tax within a year next preceding his, her or their election." This section was construed by the Supreme Court of Missouri. In the liberal decision of the case of State ex rel. v. Heath, 132 S. W. (2d) 1001, We herewith quote from the decision, l. c. 1005:

"It is clear that, under the rule of State ex inf. Bellamy ex rel. Harris v. Menengali, supra, respondent was a resident tax payer of the district because he had paid taxes for 1935 (based on June 1, 1934, assessment) and continued to own the same taxable property in the district at all times thereafter. Even though the assessor failed to include him in his assessment of June 1, 1935, this omission did not relieve him of his obligation to pay the 1936 taxes, and these taxes could be collected by following the statutory procedure. Secs. 9788, 9789, 9810, 9816, and 9979, R. S. 1929; Mo. St. Ann. Secs. 9788, 9789, 9810, 9816, 9979, pp. 7896, 7909, 7914, 8018. Surely sec. 9287, Mo. St. Ann. Sec. 9287, p. 7148, was not intended to make eligibility depend upon the payment of any state and county tax within one year's time before the date of the election. To so construe it would make one eligible, who paid, within such period of one year, a tax three or four years delinquent, even though he had paid no taxes

for any other year after such tax paid became delinquent and had no taxable property thereafter. In view of our method of assessing and collecting property taxes and the time when common school elections are held, we think it contemplated the payment of the current taxes payable during the calendar year preceding the school election since no other property taxes could become due between the end of that year and the school election. We, therefore, hold that the reasonable construction of the statutory requirement, 'shall have paid a state and county tax within one year next preceding his * * * * * election,' is that a person, to be eligible to serve as a common school director, shall have paid the state and county tax which was due and payable within the calendar year next preceding his election. See sec. 655, R. S. 1929, Mo. St. Ann. Sec. 655, p. 4899. We further hold that a person who owns taxable property and owes taxes on it which are due and payable during the calendar year preceding his election, would be eligible to take the office of common school director if he pays such taxes at least prior to the time prescribed for taking his oath of office. It follows that the statute did not prevent respondent from taking office under the circumstances shown by the agreed facts."

It appears from your letter that the director paid the taxes on his personal property before being sworn in as a director. He later paid another tax or, we assume, a property tax and was again sworn in by the Clerk as a director. If the personal property tax was paid before he was sworn in as a director, then we are of the opinion, according to the above decision, that he was eligible to serve as a director. The payment of a personal property tax, in our

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opinion, would qualify him as the payment of personal property taxes, if on an assessment, constitutes the payment of a state and county tax within the meaning of the statute. The decision, from which a portion is quoted above, also states that Section 10420 should receive a liberal construction in favor of the right of the people to exercise the freedom of choice in the selection of officers.

In view of the above decision, we are further of the opinion that in either event, the director in question is now eligible to serve on the school board.

Respectfully submitted,

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APPROVED:

VANE C. THURLO
(Acting) Attorney General

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