SCHOOLS: A school director who has paid a State and county t within one year preceding his election, although he owe other State and county taxes, is qualified unde the terms of the statute. A school director who ow property, although taxes are assessed against and pa by her mother out of the assets of her undivided inte in said property is qualified.

5-13

May 9, 1935.

FILED
18

Hon. Wallace Cooper
Prosecuting Attorney
Johnson County
Warrensburg, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office which reads as follows:

> "I have two problems concerning the qualifications of school directors on which I would like to have opinions from your office.
>
> "In the first case, the director, elected on April 2, 1935, paid 'a state and county tax' in the month of August, 1934, The tax paid at that time was a delinquent tax and had become due and payable prior to the year immediately preceding the date of the director's election. I ruled that the director elect had paid a state and county tax within the year immediately prior to his election and that it was not necessary for him to have paid all of his taxes prior to his election nor was it necessary for him to have paid a tax falling due within the year prior to his election.
>
> "In the second case, the director is the daughter of a widow. The father's estate has never been administered upon and the mother still controls his personal property. The girl who has been elected as a school director is a tenant in common in some real estate owned by

> her deceased father. She lives on this farm with her mother and the other tenants in common. The mother pays all the taxes on the land and personalty. The daughter also owns an automobile which was assessed to the mother and the tax was paid by the mother during the year preceding the daughter's election. I have ruled that the daughter is a tax payer within the meaning of the statute. She owns property, both realty and personalty, on which the taxes were paid during the year prior to her election. The taxes were paid with her knowledge and consent and, furthermore, paid out of assets in which she owns an undivided interest.
>
> "I shall appreciate an opinion on these problems at your earliest convenience."

We agree absolutely with your ruling on the above questions. Since however you have requested an official opinion from this office, we will answer your questions in the order in which you ask them.

I.

You do not state whether your questions relate to a city, town or consolidated district or to a common school district. The statutes, however, specifying the qualifications of a director in both common school districts and city, town and consolidated districts are similar; and both statutes provide that a director shall have paid a State and county tax within one year next preceding his election.

Section 9287, R. S. Mo. 1929, which is applicable to common school districts reads in part 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, ****".

The above section provides that a director shall have paid a State and county tax within one year next preceding his election or appointment. Said section does not provide that a director shall have paid all State and county taxes assessed against him or that he shall have paid the taxes assessed against him for the year preceding his election, and to so hold would be writing something in the statutes that is not there.

In State ex rel. Circuit Attorney v. Macklin, 41 Mo. App., loc. cit. 342, the Court said:

> "Nor is there any force in the argument that the taxes must be paid within each calendar year. The law simply requires that it shall be paid for two consecutive years, and not that it shall also be paid within those years. There is no ambiguity in the terms used and we cannot read them otherwise than they are written. Our duty is to declare and not to make the law. ****"

And further at loc. cit., pages 343 and 344, the Court stated:

> "Our conclusion is that the true construction of the phrase employed, 'who shall have paid a school tax within said city for two consecutive years immediately preceding his election,' is 'who shall have paid at any time preceding his election, a tax for the benefit of schools within said city for the two consecutive calendar years, next preceding the year of his election, assessed on property in which he has an interest subject to taxation, at the date of assessment or date of payment.' ****"

It is therefore the opinion of this office that a director who has paid at any time within one year preceding his election a State and county tax, although he may still owe other State and county taxes, has complied with the terms of the statute.

II.

In State ex rel. Circuit Attorney vs. Macklin, supra, the Court said at loc. cit. page 343:

> "While we are clear that the word tax, in the connection in which it is used in the law, means a tax or impost on the person's property, we are equally clear that an antecedent assessment, against the person himself, is not essential. A person is not relieved from paying taxes on property owned by him, simply because it is erroneously assessed to another, nor is he under any legal obligation whatever to pay a tax on realty in which he has no interest, simply because it is assessed to him. The assessment of a tax creates no debt in the ordinary sense of the term. City of Carondelet v. Picot, 38 Mo. 125, Peirce v. City of Boston, 3 Met. 520; Green v. Wood, 7 Ad. & Ell. N. S. 178. If a person owns an interest in property and pays a tax thereon, he pays his tax regardless of the fact to whom the property is assessed."

In the case of State ex inf. Bellamy v. Menengali, 307 Mo. loc. cit. page 447, the Court held that a married woman, who owned property which was assessed against her husband upon which he paid the taxes, is a taxpayer under the statute providing that a school director to be qualified must have paid a State and County tax within one year next preceding her election. In the above mentioned case, at loc. cit. pages 454 and 455, the Court said:

> "The undisputed evidence of both respondent and her husband, shows, that some of her personal property was included in the assessment list for 1920, and that she signed her husband's name thereto.
>
> "* * * * * * * * * * * * * * * * * * * *
>
> "It was shown without contradiction and without objection, by respondent's husband, that he paid the taxes on his property and that of his wife, mentioned in the assessment list, on December 22, 1921;

> and that he paid said taxes for the benefit of himself and wife. It appears from the evidence without question that the automobile mentioned in the list was assessed at $250; that respondent was the joint owner with her husband of the undivided one-half of same, and that the taxes were paid on this machine by respondent's husband for the benefit of both.
>
> *
>
> ***** Aside from the foregoing, the testimony of both respondent and her husband is clear to the effect that she was the owner of the personal property heretofore described in the assessment list.
>
> "We are cited in the respective briefs of counsel to text-books, and decisions outside this State, which throw very little light on the merits of the case. It is clear to us that no citation of authority is needed to sustain the action of the lower court in holding that respondent was qualified to hold the office in question. If any authority were needed, the able and unanswerable opinion of Rombauer, J., in State ex rel. Circuit Attorney v. Macklin, 41 Mo. App. at page 339 and following, settles the question and expresses our views of the subject. It fully sustains the action of the lower court. On page 343, Judge Rombauer concisely states our theory of the law in a case of this character, as follows:
>
> "'If a person owns an interest in property and pays a tax thereon, he pays <u>his</u> tax regardless of the fact to whom the property is assessed.'"

In view of the above, it is our opinion that a daughter who owns an undivided interest in real estate and also owns an automobile, all of which was assessed against her mother and on which her mother paid the taxes out of the assets

of which said daughter owns an undivided interest with the consent and knowledge of the daughter within one year preceding her election, is a taxpayer under the provisions of Section 9287, supra.

Yours very truly,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JET/afj