SCHOOLS:
TAXATION:
CONSTITUTIONAL LAW: Property within school districts added or annexed to city district liable to assessment and subject to taxation on rate fixed and approved by vote of people within city district prior to annexation.

FILED
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September 22, 1953

Honorable Philip A. Grimes
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Grimes:

This is in response to your request for opinion of recent date, which, omitting caption and signature, reads as follows:

> "Please furnish my office for the use of the County Clerk of Boone County, Missouri, an opinion on the following question:
>
> "The school boards of two common school districts, respectively known as the Brown and Keene School Districts in Boone County, certified their tax levies as provided by law at $1.25 and $1.70, respectively, for the year 1953 on May 15th of that year to the proper authorities, and subsequently after the rate was fixed and certified both School Districts were annexed to the City School District of Columbia, Missouri, as adjoining districts, pursuant to elections had in both common school districts under the provisions of Section 165.300 of R. S. Missouri 1949, and amendments thereto, and the acceptance of the annexing school district had on July 31, 1953. The tax levy of the School District of Columbia for the year 1953 as certified was $2.35. This levy was voted by the School District of Columbia at its election in April, 1953, for a period of three years by more than a two-thirds majority.

"Should the tax levies of the annexed school districts for the year 1953 be that of the levies set before May 15th by certification, or should the tax levies be that of the school district to which they were subsequently annexed?

"I am familiar with the opinions heretofore rendered by your office on this subject, (1) to Honorable Robert G. Kirkland, Prosecuting Attorney of Clay County, Liberty, Missouri, dated September 7, 1949 and (2) to Honorable John B. Peters, Prosecuting Attorney of Osage County, Linn, Missouri, dated September 10, 1949.

"I feel that neither of these opinions completely cover the instant question in view of the fact that Section 11, Article X of the Constitution was amended since the rendition of the above opinions.

"Therefore, I respectfully request an opinion from your office as to whether or not the annexed districts for the year 1953 should be required to pay the rate for school tax purposes set at their respective April meetings or whether they should be required to pay the rate set by the Board of Education of the School District of Columbia, assuming of course, that the Board of Education would, prior to September 1, withdraw the estimates heretofore filed by the common school districts with the County Clerk and substitute therefor the estimate filed by the School District of Columbia.

"It is obvious from the foregoing that an opinion from your office is necessary at the very earliest date."

This office had the occasion to render an opinion to the Honorable William F. Brown, Prosecuting Attorney of Pettis County, Sedalia, Missouri, under date of April 27, 1950, concerning the question of whether residents and taxpayers of school districts added or annexed to a consolidated district would be liable to

assessment and subject to taxation for the payment of bonded indebtedness previously incurred by the consolidated district. The conclusion of that opinion was that the taxpayers of such annexed districts would be liable for their proportionate share of the bonded indebtedness so incurred by the consolidated district. We enclose copy of that opinion.

In that opinion discussion was made of the constitutional question that might arise with regard to increased taxation to be borne by the districts annexed. In the problem presented by your request, the basic question is whether Section 11 of Article X, Constitution of Missouri, 1945, prevents the assessment of the levy as voted by the Columbia district on the Brown and Keene districts which were annexed to the Columbia district. Section 11(c) of Article X of the Constitution of Missouri, 1945, prior to its amendment provided that school districts might increase their rate of taxation above the maximum allowed in Section 11(b), which in the case of school districts formed of cities and towns is one dollar for a period not to exceed four years, by submitting the rate and purpose of the increase to a vote of the people and obtaining the approval of two-thirds of the qualified electors voting thereon. The amendment to Section 11 of Article X of the Constitution, approved November 7, 1950, provides that the rates of taxation as limited by Section 11(b) may be increased 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 vote thereon shall vote therefor. It further provides that the rate of taxation as limited by Section 11(b) may be increased for school purposes so that the total levy shall not exceed three times the limit specified in Section 11(b) and not to exceed one year when submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor. In the case submitted by you, the Columbia district at its election in April, 1953, voted a levy of $2.35 for a period of three years, which, under Section 11(c), Article X, required a vote of two-thirds of the qualified electors voting thereon prior to the amendment, and since it was for a period in excess of one year also required the approval of two-thirds of the qualified electors voting thereon voting the amendment. Therefore, we are unable to see that the constitutional amendment has any effect on the ultimate determination of the problem.

Since the levy as voted in Columbia required the approval of two-thirds of the qualified electors voting thereon, and since the Brown and Keene school districts were not afforded the opportunity to vote on this levy, the question is whether the latter two districts can be required to pay the tax levy as assessed by the Columbia district or whether to do so would be in violation of Section 11(c) of Article X of the Constitution of Missouri, 1945.

An analogous situation was before the Supreme Court of Missouri in the case of Barnes et al. v. Kansas City et al., 359 Mo. 519, 222 S.W. (2d) 756, 10 A.L.R. (2d) 553. The question there was whether a municipal bond issue approved by the voters of Kansas City at an election held November 4, 1947, was valid as to the plaintiffs and all others similarly situated who were not permitted to vote at the bond election because they resided in an area annexed to Kansas City by charter amendment already adopted but not then in effect. Passage of the bond issue required the approval of two-thirds of the qualified electors of the city. Contention was made there that to impose this obligation on those areas annexed to the city subsequent to the passage of the bond issue would be in violation of applicable provisions of the Missouri Constitution. The court ruled against this contention.

In the course of the opinion the court discussed the case of State v. Smith, 343 Mo. 288, 121 S.W. 2d 160, which case is cited in the enclosed opinion. At S.W. l.c. 759 the court said:

> "In State v. Smith, 343 Mo. 288, 121 S.W. 2d 160, supra, we discussed the question of the liability of a consolidated school district for the pre-existing bond indebtedness of its component common school districts. One of the common school districts had no bonded indebtedness at the time of the consolidation. Yet, we held the statute making the consolidated district liable for all the outstanding bonds was constitutional even though a common school district, formerly free from debt, thus became liable for its proportionate share. We held the constitutional provision requiring a two-thirds vote of the electors of a common school district in order to create an indebtedness did not apply in such a case. Shapleigh v. San Angelo, 167 U.S. 646, 17 S. Ct. 957, 42 L. Ed. 310, supports this conclusion."

In your request you refer to the opinion rendered to Honorable Robert G. Kirkland, Prosecuting Attorney of Clay County, dated September 7, 1949, and the opinion rendered to Honorable John P. Peters, Prosecuting Attorney of Osage County, dated September 10, 1949. In those opinions the conclusion was reached that an annexing district might withdraw the estimate filed by the annexed district and substitute the estimate of the annexing district, provided that the rate of levy of the annexing district was not one which required the approval of the vote of the people and was not in excess of the rate levied by the annexed district.

In those two opinions no mention was made of the cases cited in the enclosed opinion issued to Honorable William F. Brown. Apparently the primary basis for the holding that the rate of the annexing district could not be imposed upon the annexed territory if it exceeded the levy voted by the residents of the annexed territory was the case of Crabb v. Celeste Independent School District, 105 Tex. 194, 146 S.W. 528. No Missouri cases were cited on this point.

We are unable to see any distinction between the imposition of an added tax burden because of bonded indebtedness previously incurred by a district to which another district is annexed and the imposition of an increased levy of taxation under the same circumstances. Insofar as the two opinions referred to in your request conflict with the conclusion reached herein, they are withdrawn.

In view of the decision in the Barnes v. Kansas City case, supra, and upon the reasoning contained in the enclosed opinion issued to Honorable William F. Brown, dated April 27, 1950, it is our conclusion that the districts annexed to the school district of Columbia should be required to pay the rate for school tax purposes set by the board of education of the school district of Columbia and approved by the vote of the people in the Columbia district at its election in April, 1953, assuming that the board of education, prior to September 1, 1953, withdraws the estimates heretofore filed by the annexed districts with the county clerk and substitutes therefor the estimate filed by the school district of Columbia.

CONCLUSION

It is the opinion of this office that property within school districts added or annexed to a city district would be liable to assessment and subject to taxation on the rate fixed and approved by vote of the people within the city district prior to the annexation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

Enc.

JWI:lw