

SCHOOLS: Fencing and athletic field is a school purpose for which a district can levy a tax within constitutional limitations.

March 24, 1936.

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Honorable P. C. Hays
Secretary of School Board
Poplar Bluff, Missouri

Dear Sir:

We acknowledge your request for an opinion directed to us over your signature through Honorable Dwight Brown, Secretary of State, as follows:

"I'm sure that you receive a lot of peculiar requests and probably I should not make this one but knowing you as I do I don't believe that you will object to my asking the favor of you. As you know, the School District of Poplar Bluff recently acquired several acres of the old Jesse Reynolds 'Brick Yard' for a new high school site - when the district was able to finance such a project and necessity demanded.

"The Board has gone to considerable expense to level the site for an athletic field and by W. P. A., aid has provided for the completion of the 'field' but now we need a fence around the 'field' and are contemplating submitting to the voters a proposition to put a 10 cent levy of taxes for that purpose. This additional levy will be in excess of the Constitutional limit provided in Article 10, Section 11 but also said section permits this excess 'For the purpose of erecting public buildings' if two-thirds of the voters so assent.

"Now, the question arises in our minds whether the building of such a fence is forward looking enough to be legally declared within the above Constitutional limits. Of course, it's the plan and

intent of the district to eventually erect a high school on this site and this fence would be a part and parcel of said high school."

Article X, Section 11, Missouri Constitution, after providing certain limitations on the levy of taxes for school purposes, says:

"Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the one hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one

thousand inhabitants, or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts composed of cities which have one hundred thousand inhabitants or more, the annual rate on property shall not exceed sixty cents on the hundred dollars valuation and in other districts forty cents on the hundred dollars valuation: 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, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are taxpayers, voting at an election held to decide the question, vote for said increase. 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. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for State and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the State, or of the United States; said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness

now existing, or bonds which may be issued in renewal of such indebtedness: Provided, That the city of St. Louis may levy for municipal purposes, in addition to the municipal rate of taxation above provided, a rate not exceeding the rate which would be allowed for county purposes if said city were part of a county."

Your question turns on a determination of what constitutes "school purposes" within the meaning of the phrase as used in the Constitution? Is the building of a fence around the athletic field owned by the school district a "school purpose" within the constitutional provision allowing a district to levy taxes for school purposes, and allowing the voters to increase the annual levy, within limitations, for school purposes? You state in your request that this plot of ground was purchased for a new high school site, and we understand from your letter that the present athletic field is a part of this high school site, and that a new high school on the site is contemplated as soon as necessary legal steps are taken and necessary funds are provided. You state that this proposed fence is planned as a part of the permanent improvements of this high school site belonging to the school district. You state that "its the plan and intent of the district to eventually erect a high school on this site and this fence would be a part and parcel of said high school." The phrase "school purposes" as used in this constitutional provision has been judicially construed in *Peter v. Kaufmann*, 38 S. W. (2d), 1062, l. c. 1066, as follows:

"Section 11, Art. 10, of the Constitution places limitations on the annual rates of taxation which can be levied for school purposes, which term is construed to cover all the usual and ordinary expenses of maintaining and operating schools."

CONCLUSION.

This department is of the opinion that the School Board of Poplar Bluff can levy a school tax, and the

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people in the district can vote an increased levy in school taxes to raise funds for the purpose of putting a fence around the school property described in your request, and, at the same time, not violate the provisions of Article X, Section 11, supra, limiting all tax levies by a School Board to "school purposes."

The property was purchased and intended as a high school site. The athletic field under modern pedagogy theory is almost as essential to education as the class room. The theory is, that a sound physique is as essential to the proper educational program as a sound mind. The phrase "school purposes" as used in the Constitution was not intended to limit the school levy for purposes directly and immediately subject to use in the school room, but said phrase allows a levy for purposes contributing to and aiding in the education of persons.

An athletic field on this site with a fence around it intended for the recreation of students of the district while attending school, is a "school purpose". Such an expenditure is a usual and ordinary expense of supplying and maintaining a school.

Respectfully submitted.

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

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