

SCHOOLS: :The school board of a school district has
:no authority to call a special election to
Levy of tax rate: :vote on fixing a rate of taxation in said
:district which is not provided for by
:statute.

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November 8, 1954

Honorable D. R. Jennings
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Mr. Jennings:

This will be the opinion you requested from this office on the subject of whether or not a school board is required to call a special election for the purpose of voting a levy when the amount of said levy is fixed in a petition requesting that such special election be called. Your letter requesting the opinion reads as follows:

"Request an opinion as to whether or not a school board is required to call a special election for the purpose of voting a levy when the amount of said levy is fixed in said petition.

"School District No. 16 of the County of Montgomery has held from two to three elections and failed to vote the levy as submitted by the board. Since then the board has refused to call another election for the submission of a levy and a petition carrying the required number of signatures has been submitted to said board, which petition reads as follows:

"We, the undersigned qualified voters, equal to ten per cent or more of the number casting their votes for the directors of the school board at the last regular school election held in School District No. 16, County of Montgomery, State of Missouri, desire that a special meeting of the qualified voters of said district be called for the

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purpose of voting a levy of one dollar and ninety-five cents (\$1.95) on each one hundred dollars (\$100.00) assessed valuation of said district.

"Therefore, I would appreciate your advising as to whether or not the board should call a special election under said petition and since the time for closing the books is growing very short, will you please rush said opinion as fast as possible."

Section 165.077, V.A.M.S. 1949, providing for the annual estimate of needs of a school district and the tax rate to be levied by taxation to raise sufficient funds to maintain the district school for the ensuing year reads as follows:

"The board of directors of each school district shall, on or before the fifteenth day of May of each year, forward to the county superintendent of schools an estimate of the amount of money to be raised by taxation for the ensuing school year, and the rate required to produce said amount, specifying by funds the amount and rate necessary to sustain the school or schools of the district for the time required by law or authorized by the qualified voters of the district, to meet principal and interest payments on the bonded debt of the district, and to provide such funds as may have been ordered by the qualified voters of the district for other legitimate district purposes, including the purchase of school building sites, buying or erecting school buildings, repairing and furnishing such buildings, and providing foot bridges across running streams."

This is the only section in our school code providing for fixing the amount of the annual rate of taxation for school purposes.

The next numbered section 165.080, V.A.M.S. 1949, Cum. Supp. 1953, page 263, provides in detail the procedure to be followed by school districts, boards of education, and others required to act in such matters, when it becomes necessary to increase the annual rate of taxation. That section reads as follows:

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"Whenever it shall become necessary, in the judgment of the board of directors or board of education of any school district in this state, to increase the annual rate of taxation, authorized by the constitution for district purposes without voter approval, or when a number of the qualified voters of the district equal to ten per cent or more of the number casting their votes for the directors of the school board at the last school election in said district shall petition the board, in writing, for an increase of said rate, such board shall determine the rate of taxation necessary to be levied in excess of said authorized rate, and the purpose or purposes for which such increase is required, specifying separately the rate of increase required for each purpose, and the number of years, not in excess of four, for which each proposed excess rate is to be effective, and shall submit to the qualified voters of the district, at the annual school meeting or election, or at a special meeting or election called and held for that purpose, at the usual place or places of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board, due notice having been given as required by section 165.200; and if the necessary majority of the qualified voters voting thereon, as required by article X, section 11 of the constitution, shall favor the proposed increase for any purpose, the result of such vote, including the rate of taxation so voted in such district for each purpose, and the number of years said rate is to be effective, shall be certified by the clerk or secretary of such board or district to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all taxable property, 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 provided by law."

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The subject of the request for the opinion is not one of proceedings to increase the annual rate of taxation by a school district but is upon the question whether a school board is required to call a special election for the purpose of voting upon a levy independently specified in a petition, and not in conformity with the terms of Section 165.077, supra, when the amount of said levy is so fixed in said petition.

The question submitted is, therefore, whether a tax rate devised by individuals, and desired by them to be levied for school purposes, and sought to be submitted to a vote of the qualified voters of a school district in a special election, may be so fixed by a petition requesting that the matter be so submitted for a vote, and if a school district board is required to call such special election for voting on the question.

It appears that the petition noted and incorporated in your request was drawn with the purpose and idea in the minds of the petitioners that the petition was permissible under, and complied with, the terms of said Section 165.080, supra, with respect to the number of voters who submit the same and the calling of a special election to vote on whether the annual rate of taxation for school purposes might be increased. But the petition here being considered is not in response to any of the other terms or provisions of said Section 165.080, supra. That section relates solely to increasing the annual school rate of taxation. The petition submitted here is based upon the theory and purpose of the submission, at a special election called by the district board, of the proposition of voting on the adoption of a specific rate of taxation in the district, a sum calculated in terms of dollars and cents by petitioners, a plan sponsored, no doubt, by persons of well-meaning intentions, but not authorized by law. The petition, a copy of which is contained in your request, reveals the fact that the petitioners intended to, and did, request that a special election be called by the district school board and that at such special election there be submitted the question to the qualified voters of the district of approving or disapproving the rate of taxation specified in the petition, independent of said Sections 165.077 and 165.080, supra, for raising money by taxation with which to maintain the school in said district for the ensuing school year.

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There is no statute in this State authorizing the fixing of a rate of taxation for raising money in that manner with which to maintain a school.

The decisions of the Appellate Courts of Missouri are numerous in which it is held that mandamus is a proper remedy to compel administrative or ministerial officers, such as boards of education, to perform duties imposed upon them by law when such officers refuse to act. But this is not that kind of situation. The statutes of this State make no provision for the submission by a school board or board of education to qualified voters of a school district, a question for the adoption or rejection of a levy of a rate of taxation not provided for by the statutes.

The petition in this case could not lawfully create or fix such a tax rate as is therein described. Under this petition the school board of District No. 16 in Montgomery County, Missouri, has no duty to perform therein and has no power to call a special election for the submission to the qualified voters of such district the question of the adoption or rejection of the rate of taxation mentioned in said petition for the maintenance of the public school in said district.

It seems plain that the school board of School District No. 16 in Montgomery County, Missouri, has no authority by law to do so and such board cannot be compelled to call a special election for the purpose of voting on a levy of a rate of taxation in such district named in the petition and as mentioned in your request.

CONCLUSION

Considering the premises, it is, therefore, the opinion of this office that the school board of District No. 16 in Montgomery County, Missouri, is not required to call a special election for the purpose of voting a levy of a rate of taxation for school purposes, where the amount of said levy is fixed in a petition to such school board requesting that a special election be called.

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

Very truly yours,

JOHN M. DALTON
Attorney General

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