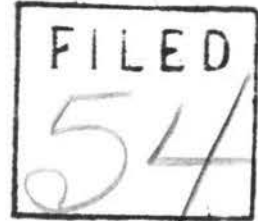


SCHOOLS: The erection of a second story on present school building is not a "repair" so as to require only majority vote of qualified voters, but must be given two-thirds majority by voters.

6-9

June 8, 1937



Honorable Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

This department is in receipt of your letter of May 8, 1937, in which you request an opinion as follows:

"The Clarksville School District at the last school election voted for a levy of 20¢ on the \$100.00 assessed valuation as provided for under Section 9226 of the Revised Statutes of Missouri, 1929. The ballot read as follows: For a levy of 20¢ on the \$100 assessed valuation for repair and building purposes. There were 210 cast for the levy and 159 against. This tax money which will be raised is to be actually spent on putting a second story room over the present school building. As provided in Section 9226 a levy must receive two-thirds of the vote cast if the purpose of such levy is for buying or erecting school buildings. If such levy is to be used for repairing or re-furnishing a school building only a majority of the votes cast is necessary. Under those conditions as set out above and set out in the ballot was it necessary that the levy receive a two-thirds vote or a majority."

In answer to a part of your question, we are enclosing an opinion heretofore handed down by this office on May 8, 1936, and written by the Honorable Olliver W. Nolen, Assistant Attorney General, to Mr. L. H. Coward, Superintendent of Public Schools of Greene County, in which Mr. Nolen concludes that:

"It is the opinion of this department that only the majority of the qualified voters of a school district are required to carry a proposition solely for the purpose of repairing and furnishing a school building."

In your request you state that the tax money to be raised by the levy will actually be used to construct a second story on the present school building. This, then, brings us to the question as to whether or not this levy is solely for the purpose of repairing and furnishing the school building, so as to require the assent of only a majority of the qualified voters of the school district.

The word "repairs" as it is used in Section 9226 R. S. Mo. 1929, has been judicially defined a number of times in other jurisdictions which have statutes similar to ours.

In the case of Board of Education of Hancock County, et al. v. Moorehead, et al., an Ohio case reported in 136 N. E. 913, 914, the Supreme Court of that state said:

"Repairing, which means, as we understand it, the restoring of a decayed, injured, dilapidated, or partially destroyed building to a more or less sound, substantial state."

In the case of Murphy v. Duffy, Town Treas., et al., a Rhode Island case reported in 124 Atl. 103, 105, where a school district sought to build another story on its school building without a vote as was required by statute, the Rhode Island Supreme Court said:

"We will consider the nature of the work provided for in the contract between the special committee and McCusker. We regard it as a contract for new construction to furnish additional school facilities for the town. It was not for repairs upon the old school building, save in some minor particulars."

In the case of Kuykendall v. Hughey, 224 Ill. App. 550, 553, the court said:

"The contention of appellants cannot be sustained on the theory that the building of the additional room is but the repair of the school house and that repairs may be made without a vote of the people. In our opinion the word 'repair' is used in the statute in its ordinary sense and means restoration after decay, injury, or partial destruction, and does not include alterations or additions which the directors may choose to make."

In the case of Haeken v. Isenberg, 288 Ill. 590, a case where the word "repairs" as used in a clause in a lease was before the court for interpretation, the court said:

"The word repair has its ordinary meaning in this clause as given in Funk & Wagnall's New Standard Dictionary: Restoration after decay; waste; injury or partial destruction; supply of loss, reparation. It does not include, in this lease, alterations or additions that lessee may choose to make."

The cases we have quoted from, we think, define "repairs" as used in our statutes in connection with voting a tax levy in school districts for the repair of school buildings. The levy in the instant case was for "repair and building purposes" and in no way, in view of the premises, can the construction of a second story on the present school building be interpreted to mean "repair" as this term has been judicially defined.

Therefore, it is the opinion of this department that the erection of a second story upon the present school building is not a "repair" in the sense that the word is used in Section 9226, R. S. Mo. 1929, and unless the tax levy was for the sole purpose of repairing and furnishing a school building, the proposition submitted to the qualified voters must receive their assent by a two-thirds majority as is provided by Section 9226, R. S. Mo. 1929, and in accordance with the opinion attached hereto.

Further, the proviso in Section 9226 R. S. Mo. 1929 provides:

"That when the proposition to be voted on refers only to repairing or furnishing, or both repairing and furnishing such school building, the proposition shall be deemed to have been carried at the election if a majority of the votes cast are cast in favor of the proposition."

The proposition submitted in the instant case did not "refer only to repairing and furnishing" but was for "building and repair purposes". This proposition was defeated for failure to receive two-thirds majority vote, but did receive a majority vote. This however does not carry the proposition as to "repair", because said proposition referred to "building" and the levy failed to carry for any purpose when it did not receive the two-thirds majority and cannot be levied and collected.

Respectfully submitted,

JAMES L. HORNBOSTEL
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

LLB:SW