

SCHOOLS: An estimate may be withdrawn and another substituted if done before the first estimate has been acted upon.

May 26, 1937.

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Mr. J. C. Lynch
County Superintendent
of Schools
Keytesville, Missouri

Dear Sir:

This is to acknowledge your letter dated May 17, 1937, as follows:

"At an annual school election held in a rural district, a levy of thirty cents was voted. State Aid has been denied this district on account of low average daily attendance. If the children are transported, there is an abundance of money on hand to pay the expense.

"Can the school board now reduce the levy from thirty cents to nothing? I believe they do have this power, but I would like to have your opinion."

We note that the levy of thirty cents is within the limitations of the Constitution, namely Article X, Section 11.

Section 9214 R. S. Mo. 1929, reads in part as follows:

"The board of directors of each district shall, on or before the fifteenth day of May of each year, forward to the county clerk an estimate of the amount of funds

necessary to sustain the school of their district for the time required by law;* * stating clearly the amount deemed necessary for each fund, and the rate required to raise said amount."

Section 9261 R. S. Mo. 1929, reads in part as follows:

"On receipt of estimates of the various districts, the county clerk shall proceed to assess the amount so returned on all taxable property, real and personal, in said district, as shown by the last annual assessment for state and county purposes, including all statements of merchants in each district of the amount of goods, wares and merchandise owned by them and taxable for state and county purposes."

You will note that by virtue of Section 9214, supra, the Board of Directors submits an estimate to the County Clerk, stating the amount of funds necessary to sustain the school, and by virtue of Section 9261 the County Clerk assesses the amount requested.

You state that at the annual election a levy of thirty cents was voted, but that such amount is not needed, and you inquire if the Board can reduce said amount from thirty cents to nothing, the reason for the reduction being that said amount as estimated will not be necessary.

As Section 11 of Article X of the Constitution provides that the annual rate on property shall not exceed forty cents on the hundred dollars valuation without a majority vote of the taxpayers, it is seen that the vote at the

annual election for the levy of thirty cents is not binding on the Board of Directors. In other words, the Board of Directors can levy in a rural district up to forty cents without a vote.

Therefore it is our opinion that while thirty cents was voted at the annual school election by the voters, yet it is the duty of the Board of Directors to file an estimate of the amount needed, and said vote does not preclude the Board of Directors to revise the estimate different from that voted. It is well settled that an estimate may be withdrawn before it is acted upon and taxes extended.

In the case of State ex rel vs. Phipps, 148 Mo. 31, the Supreme Court said: (pp.36, 37)

"On the trial the defendant introduced evidence tending to prove that in pursuance of the election, another and different estimate from the one in question was made and forwarded to the clerk, in which the apportionment was different from that suggested in the notice of the election and from that adopted in this estimate. But as that estimate was withdrawn and never acted upon, and the estimate in question substituted therefor and was the one upon which the levy was made, we do not see how the validity of this tax can be in any way affected by the facts that such an estimate was made, or by any defects thereof."

In Lyons vs. School District of Joplin, 278 S. W. 74, the Supreme Court of Missouri said: (p.78)

"* * * The estimate filed under the provisions of section 11142 (Sec. 9214 R. S. Mo. 1929) may be withdrawn, and revised estimates may be substituted, if done before the first estimates were acted upon, and a valid levy may be made upon such revised estimates. State ex rel. v. Phipps, 148 Mo. 31, 49 S. W. 865."

Mr. J. C. Lynch

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In view of the above and foregoing it is our opinion that the School Board would have the right to revise the estimate from thirty cents to nothing, and if an estimate has been forwarded, as required by Section 9214, supra, that such may be withdrawn and a new estimate substituted,

Respectfully submitted,

James L. HornBostel
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

JLH/R