SCHOOLS: Expenditures for furnishing and repairing school building is for school purposes; taxpayer only has right to question levy for legality; and other questions.

March 7, 1936.

3-11

FILED
68

Mr. J. R. Oliver
Clerk County Court
Dunklin County
Kennett, Missouri

Dear Sir:

This is to acknowledge your letter wherein you request our opinion on the following questions:

> "I would suggest that your opinion have to do with the following questions. However, if these questions do not in your opinion bring out what we have in mind please let us know what questions we could ask to clear up this point.
>
> "Do expenditures for furnishing, repairs, insurance and maintenance of school buildings fall in the legal maximum for 'school purposes'?
>
> "Can a rate be questioned in that it will raise more money than is necessary for (1) school purposes, (2) sinking or interest fund, or (3) for repairing furnishing or erecting buildings?
>
> "Who has the power to determine whether or not a rate is excessive or illegal?
>
> "If such an illegal or excessive rate is certified to the County Clerk, and by him extended on the tax books, does such an illegal or excessive rate gain validity by the lapse of time?"

I.

Do expenditures for furnishing, repairs, insurance and maintenance of school buildings fall in the legal maximum for 'school purposes'?

The Constitution of Missouri, Section 11, Article X, specifies the maximum rates that school districts may charge for school purposes; the pertinent part of said constitutional provision being as follows:

> "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 tax-payers, voting at an election held to decide the question. vote for said increase."

You will note that the Legislature has divided school districts into two classifications, namely, (1) districts formed of cities and towns, and (2) "other" districts. If a district formed of cities and towns desires to levy a rate of one dollar it takes a majority vote of the taxpayers voting at the election to do so, and if other districts desire to levy a rate up to sixty-five cents on the one hundred dollars valuation, then it takes a majority vote of the taxpayers voting at the election to do so. Whether the school district be either a city or town district, or other district, such cannot exceed the rates for "school purposes" prescribed by the Constitution. Jacobs et al. v. Cauthorn et al., 248 S. W. 343, l. c. 345; Harrington v. Hopkins et al., 231 S. W. 263.

You will note that the Constitution quoted aforesaid uses the words "annual rates for school purposes," and you request whether or not certain expenditures fall within the definition of the words "for school purposes."

The Supreme Court of Missouri in Hudgins v. Mooresville Consolidated School Dist., 278 S. W. 769, defined the words "school purposes" as follows (l. c. 771):

> "The constitutional limitation in section 11, as applied to a levy of taxes by school districts, has reference to the annual rate of such levy for school purposes for that year. By 'school purposes,' as the term is used in the Constitution, is meant such annual expenditures as are necessary to the conduct or maintenance of the school during the year. C. & A. R. Co. v. People, 163 Ill. loc. cit. 621, 45 N. E. 122. The fixed rate in districts, as at bar, for school purposes, is 40 cents on the $100 valuation of the property of the district. This rate may be increased for the same purpose, by a majority vote of the people, to 65 cents on the $100 valuation. These limitations, however, have no application to the creation of a debt for building purposes and the equipment of such buildings as may be erected. The Constitution, in effect, so declares in providing that:
>
> "'For the purpose of erecting public buildings * * * in 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 * * * school district, voting at such election, shall vote therefor.'"

Therefore, it is our opinion that if expenditures for furnishing and repairing school buildings are necessary to the

conduct or maintenance of the school during the year, then such furnishing and repairing is included in the term "school purposes."

Note the language of the court en banc in Harrington v. Hopkins et al., supra, when it construed Section 11 of the Constitution:

> "The language of the section just quoted is too plain to need construction. It limits the collection of all taxes in a school district such as this to $1 on the $100 valuation for all school purposes; that is, the rate cannot be increased in such a district for all school purposes in a sum in excess 'of one dollar on the hundred dollars except for the purpose of erecting public buildings,' etc., and there is no pretense that this 90 cents was voted for the purpose of erecting a schoolhouse, or other public buildings, but solely to repair and furnish a building already existing. In no sense can the words 'furnishing' and 'repairing' be construed to mean the 'erection of public buildings,' as those words are used in the Constitution."

II.

Can a rate be questioned in that it will raise more money than is necessary for (1) school purposes, (2) sinking or interest fund, or (3) for repairing furnishing or erecting buildings?

In our opinion a taxpayer may question a tax levy, if he believes it is illegal. No other person is privileged to raise that question, and if the taxpayer does not, the levy stands whether legal or illegal. The taxpayer in order to obtain relief from an invalid tax levy would have to resort to a court of equity as was done in the cases of Harrington v. Hopkins et al. and Jacobs v. Cauthorn et al.,

supra. If a taxpayer complains to the county court that a levy is illegal such court cannot grant relief to the said taxpayer.

In our opinion to you, dated November 23, 1935, we held that the county court, in determining the rate for school purposes on distributable property of public utilities, must take the average rate and not the rate necessary to operate the schools. We quote from said opinion:

> "The duty upon the county court is to take the average of the taxes levied in all school districts and not the average of what might be necessary to operate the schools. * * * * * * * * * * * * * * * * *
>
> "'The only thing the county court has to do relative to fixing the rate of taxation for school purposes against distributable property of railroads and public utilities is to take the rates levied in each district and add them together and strike an average. There is a vast difference between what rates are levied in each district and what rates may be necessary to operate the school. The statute says 'the several county courts shall ascertain from the returns in the office of the county clerk the average rate of taxation levied for school purposes.'"

Thus it follows that if only the circuit or appellate courts can grant relief to a taxpayer on an invalid tax levy it would not avail said taxpayer anything to question the rate, except before said courts. Hence, we believe it unnecessary to answer the question of "Can a rate be questioned in that it will raise more money than is necessary for" certain school purposes, as the matter must be done before the courts and is of no concern of the county court or circuit clerk, as such are powerless to grant relief to a taxpayer upon his complaint that more taxes are sought than is necessary to operate the schools. We believe the taxpayers will not vote more taxes than absolutely necessary to maintain the schools, and will keep within the constitutional limits.

III.

Who has the power to determine whether or not a rate is excessive or illegal?

The above question has been answered under part II above and we repeat that the circuit or appellate courts only have the power to determine whether or not a rate is illegal.

IV.

If such an illegal or excessive rate is certified to the County Clerk, and by him extended on the tax books, does such an illegal or excessive rate gain validity by the lapse of time?

We answer the above question by quoting from the decision in the case of White et al. v. Boyne et al., 30 S. W. (2d) 791, wherein the Springfield Court of Appeals said (l. c. 792):

> "The purpose of this action is to restrain the collection of all taxes levied by the consolidated district for school purposes for the year 1927. The point is made that since the consolidated district was not organized until after June 30, 1927, it could not maintain school as a consolidated district and levy taxes therefor in the school year 1927. We mention this to show the legal question sought to be raised and have decided in this case. It is our opinion, however, that the further facts shown by the record force us to the conclusion that plaintiffs have slept on their rights and the delay in bringing suit to enforce them prevents their recovery in this action. * * * * * * * * * * * * * * * * * *
> *
> It is apparent that at the time the suit was filed a considerable part of the

taxes must have been paid, and before the time of its determination the greater portion would be paid. It is true, as urged by counsel for plaintiff, that injunction is a proper remedy to enjoin thecollection of taxes levied in excess of the rates allowed by the Constitution or without authority of law. But there are other conditions precedent to the proper exercise of such a remedy. In such cases the injury to the complaining party must appear to be substantial, and not disproportionate to the relief sought or to the loss and inconvenience of others and of the public, and the application * * * must be seasonably made in view of all the conditions. (Italics are ours.)"

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General

JLH:EG