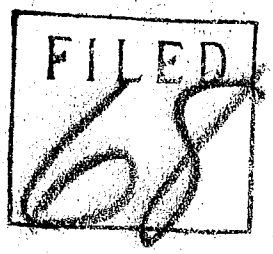
SCHOOLS: Senate Bill No. 286, 68th General Assembly, requires reduction in total school levy but does not require that the rate for each purpose be reduced proportionately; in subsequent years board may file revised estimate at any time before original estimate is acted upon and thereby levy rate of taxation for each purpose less than but not in excess of that authorized by vote of the people.

SCHOOL DISTRICTS:

TAXATION:



November 17, 1955

Honorable W. H. S. O'Brien
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Mr. O'Brien:

This is in response to your request for opinion dated October 4, 1955, which reads as follows:

"Clyde Hamrick, Superintendent of Schools has raised an issue concerning the reduction of school levies which I believe has not been answered by your prior opinions. The questions we wish to submit are as follows:

1. Does a School Board have authority after submitting a levy to the voters for their approval, setting forth the total amount of the levy and the amount for each fund, have the right when reducing the levy as required by the recent statute passed by the Legislature which requires reduction in the levy when the assessment is increased over 10%, to decrease some fund levies more than others are decreased.

2. Is the Board in the above circumstances authorized to calculate the total required decrease in the entire levy, and then reapportion it among the funds as they see fit without an equal percentage reduction of each fund voted on.

3. In future years (when the above mentioned statute will not be applicable) does the Board have authority after the voters have approved a levy where the levy shows the amount for each fund, to change the amount that certain funds might receive

by increasing one, and decreasing the other, so long as the entire levy remains the same.

"As information which might be helpful in answering the above 3 questions, Jefferson County was one of 26 counties effected by the recent tax ruling whereby 60% increase in assessments were ordered in said County. Levies from most School Boards being in excess of the statutory limits were submitted to the voters for their approval.

"In this submission the amount of each fund was to receive on the levy was set forth on the ballot as required by law.

"Your clarification of this issue will be appreciated."

The recent statute to which you refer, requiring a reduction in your school levy, is Senate Bill No. 286 of the 68th General Assembly. You have stated that Jefferson County is one in which a reduction of the school tax rate is required in order to comply with the terms of that act. Since other aspects of this bill have been considered in other opinions, we shall not set it out in full or consider any points other than the ones particularly applicable to your problem.

As we understand the phraseology of that bill and its purpose, the Legislature, by making this requirement that tax rates be reduced so as to produce substantially the same amount of taxes as previously estimated to be produced by the original levy, was concerned only with the aggregate levy imposed by a school district or other political subdivision. We do not believe that the act itself purports to say that the rates of levy for the various purposes, i.e., teachers, incidentals, etc., must of necessity be reduced in the same percentage.

Senate Bill No. 286 requires the taxing authority, in this case the school board, to reduce the rate of levy. The original levy is made by the submission of an estimate in accordance with Section 165.077, RSMo 1949 (Pope v. Lockhart, 299 Mo. 141, 252 SW 375; Lyons v. School Dist. of Joplin, 311 Mo. 349, 278 SW 74). We take it that the reduction must be made in the same manner, i.e., by the submission of a revised estimate based upon the increased valuation.

There is no question but that absent Senate Bill No. 286 a school board is authorized to submit a revised estimate if done before the original estimate is acted upon (State ex rel. Thorp v. Phipps, 148 Mo. 31, 49 SW 865). Senate Bill No. 286 does not purport to alter this authority but merely makes it mandatory that the board do so.

If the rate of levy were within the constitutional maximum which the board is authorized to make without a vote of the people, again there would be no question but that the board could make the reduction by way of a revised estimate in any manner that it might see fit just as long as the aggregate levy was reduced by the proper percentage. However, since these rates of levy were voted upon by the people, and in view of changes which have been made in the Constitution and applicable statutes since the decision of State ex rel. Thorp v. Phipps, supra, this proposition must be re-examined.

In State ex rel. Thorp v. Phipps, supra, the school board had submitted to the voters a proposition to levy one hundred cents on the $100 assessed valuation of the district for school purposes, eighty-five cents of said one hundred cents to be applied for the teachers' fund and fifteen cents for the incidental fund. This proposition was approved by the voters.

However, subsequent thereto the board submitted an estimate calling for a levy of seventy cents for the teachers' fund, fifteen cents for the incidental fund and thirteen cents for the interest fund, a total levy of ninety-eight cents.

Contention was made that the vote authorizing the levy of one hundred cents, eighty-five cents for the teachers' fund and fifteen cents for the incidental fund, did not authorize a levy of ninety-eight cents, seventy cents for the teachers' fund, fifteen cents for the incidental fund and thirteen cents for the interest fund.

The court quoted from the applicable portion of the Constitution of 1875 and the statutes, and disposed of this contention in the following language, Mo. l.c. 36:

> "The question which the Constitution required to be submitted to the taxpaying voters of the district, was, whether the rate of taxation for school purposes might be increased to one hundred cents on the $100 and that is the only question the statute required to be submitted to their vote. Sec. 8005.

> "That question was decided in favor of such increase in this instance, and authorized an increase of the rate to ninety-eight cents on the $100, the same being within the limit of the authority granted. With the apportionment of the tax thus authorized the voters had nothing to do. That duty was devolved upon the board. Sec. 8000. And the authority to apportion the same as was done in the estimate in question was in no way affected by the suggestion of a different apportionment in the notice of the election. So that there is nothing in this contention."

At the time of this case all that was required by the Constitution and the statutes to be submitted to the voters was the question of increasing the aggregate levy to a certain amount. The court held that once the board had been authorized by the people to increase the total levy to the amount voted upon, the authority to apportion the tax was vested in the board and a suggested apportionment submitted to the people was not binding upon the board. This is no longer entirely true.

Now Article X, Section 11(c), Constitution of Missouri, 1945, as amended November 7, 1950, provides that in order to increase the rate of taxation above the constitutional maximum authorized without a vote of the people the rate and the purpose of the increase must be submitted to the voters for their approval. That section reads:

> "In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed one year, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided in school districts in

> cities of seventy-five thousand inhabitants or over the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed two years, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided, that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

The implementing statute, Section 165.080, RSMo, Cum. Supp. 1953, makes it clear that the rate of increase for each purpose must be stated separately and voted upon separately. That section provides that "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, * * *." (Emphasis added.) It is further provided that "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 * * *," (emphasis added) etc.

In other words, instead of going to the people for authority to make a blanket increase in the aggregate rate of taxation to be imposed upon the district, leaving the board with unbridled discretion as to the apportionment of the taxes, the board must now apply to the people for the authority to increase the rate of taxation for each purpose separately.

We believe the reasoning in State ex rel. Thorp v. Phipps, supra, at the present time is applicable to this problem insofar as it holds that the vote of the people merely authorizes a total

levy of a certain amount but does not require it; that the board may levy any amount within the limits authorized by the people. Now that the rate for each purpose must be treated separately, by the same token the board may levy any amount within the limits authorized by the people for each purpose.

Although for authority to increase the rate of taxation the rate for each purpose must be treated separately, for purposes of Senate Bill No. 286 the total levy may be treated as one "rate of levy," the reduction of which is thereby required. Therefore, the answer to all three of your questions is contained in the following conclusion:

CONCLUSION

It is the opinion of this office that Senate Bill No. 286 of the 68th General Assembly, where applicable, requires a reduction in the total rate of levy of a school district, but that in reducing such levy the board of education of such district is not required to reduce the rate voted by the people for each purpose proportionately; that in subsequent years the board may file a revised estimate at any time before the original estimate is acted upon and thereby levy a rate of taxation for each purpose less than but not in excess of that authorized by vote of the people.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml