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SCHOOLS: School district organized as a town district under the provisions of Section 9325, prior to the enactment of Section 9194, may levy a maximum tax of \$1.00 on the \$100.00 valuation.

School district classified as a town district, under Section 9194 may levy a tax of \$1.00 on the \$100.00 valuation.

District not so organized or classified is limited to a levy of 65 cents on the \$100.00 valuation.

6-12
May 15, 1935

Mr. J. E. Pummill
Superintendent Eureka Public Schools
Eureka, Missouri



Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this department, which reads as follows:

"Would it be possible for your office to render us an opinion as to the following:

This is a Consolidated School District, duly organized as such, with six directors, secretary, treasurer, etc., but we have been voting a levy of only 65¢ for school purposes (teacher salaries and incidentals). In reading carefully the sections of the 1933 School Laws which apply to classification of school districts, and Article IV which has to do with town, city, and consolidated districts, it would seem that the clear intention of the Legislators in framing the consolidation laws was that consolidated districts could vote the limit of \$1.00 for school purposes, just as town and city districts may do.

Could you render an opinion as to whether we may do this?"

You informed us by supplemental letter that there are no incorporated towns in your district but that there are three unincorporated towns, the plats of which have been filed with the recorder of deeds and that your district was organized prior to 1909.

Section 11 of Article X of the Constitution of Missouri, provides, in part, 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 of 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. * * *"

Section 9194 Revised Statutes Missouri 1929, which was enacted in 1909, reads as follows:

"The public schools of the state are hereby classified as follows: First, all districts having only three directors, shall be known as common school districts; second, all districts outside of incorporated cities, towns and villages, which are governed by six directors, shall be known as consolidated school districts; third, all districts governed by six directors and in which is located any city of the fourth class, or any incorporated town or village, shall be known as town school districts, and fourth, all districts in which is located any city of the first,

second or third class shall be known as city school districts."

Section 9325, Revised Statutes Missouri 1929, was first enacted in 1895 and reads, in part,

"Any common school district containing within its boundaries a city, town or village, the plat of which has been filed in the recorder's office of the county in which the same is situated, or any district having two hundred or more children of school age by the last enumeration, may be organized into a town or city school district, and, when so organized, shall be a body corporate, and known as the school district of _____, and in that name may sue and be sued and possess the same corporate powers and be governed the same as other school districts except as herein provided; * * * * *."

In State v. St. Louis and S. and F. R. Co. 174 S.W. page 64, it was held that a school district governed by six directors and in which was located any city of the fourth class or any incorporated town or village, is a town school district. And said town district, although having contiguous territory outside of said city, town or village, could levy taxes not exceeding \$1.00 on the one hundred dollars valuation. At l. c. page 65 the court said:

"Reducing, for the purposes of this discussion, the contention of appellant to its last analysis, does section 11 of article 10 of our Constitution, which fixes the maximum amount of taxes which may be levied upon each \$100 valuation at 65 cents, except 'in districts formed of cities and towns,' require that the limits of such city or town school district be precisely coterminous with the limits of the incorporated town or city, and unless school district limits are exactly coterminous with the town limits and no

outside contiguous territory is attached, can the district legally levy more than 65 cents taxes on the \$100 valuation for school purposes?"

In conclusion, the court, at l. c. pages 66 and 67, stated:

"Therefore, being mindful of the rule which forbids us to declare a statute unconstitutional unless it so appears to be beyond a reasonable doubt (State v. Baskowitz, 250 Mo. 82, 156 S.W.945), we are constrained to hold that so much of the section of the statute which allows a town school district to attach or have attached to it outlying country territory for school purposes, pursuant to the provisions of said section, is not unconstitutional. It follows, we think, and we so hold, that a town school district as classified by the third subdivision of section 10775, and as such district is defined by section 10864, may lawfully levy as much as 100 cents on the \$100 valuation as taxes for school purposes. This view we reach without the necessity of falling back upon the argumentum ab inconvenienti; for the contrary view, applied to the conditions as we know them now to exist, would be utterly destructive, because of the fact that there is scarcely a town school district in the state outside of cities of 100,000 inhabitants or more, but which has some outlying contiguous territory attached to it, to the great mutual profit and convenience of both city and country."

In the case of State ex rel. Reynolds, v. Rickenbrode 4 S. W. (2d) page 436, it was held that a school district organized under the provisions of what is now Sections 9325 and 9326 as a town district, that is a district which includes an unincorporated town, the plat of which has been filed with the recorder of deeds, was not annulled by the enactment of Section 9194, supra, which defines a town school district as one in which a city of the fourth class or an incorporated

town or village is located, and could therefore, by a vote of the people, levy a tax of one hundred cents on the \$100.00 assessed valuation. The court, at l. c. 437, stated:

"We have here the Avalon district organized as a town district, and the only requirements regarding the town was that the plat of the town should be filed with the recorder of deeds. It was not necessary that the town should be incorporated. The subsequent statute (section 11123) could not annul an organization which had already been made, even if it applied to such a case. The Avalon district, as a town district, was therefore properly incorporated under the Constitution and under the statute then in force. It provided for six directors, and it was brought within the proviso of section 11, art. 10, of the Constitution, which authorized the school tax to be increased by vote of the people to 100 cents on the \$100 assessed valuation."

The court further held at l. c. 438, that the fact that the Avalon School District was later organized into a consolidated district would not cause said district to lose its charter as a town district or prevent it as such from voting a tax of \$1.00 on the \$100. valuation.

CONCLUSION.

In view of the above, it is the opinion of this department that a school district organized prior to 1909, which includes an unincorporated town, the plat of which has been filed with the recorder of deeds of the county in which the district is situated, may, by a vote of the people, levy a maximum tax of \$1.00 on the \$100 assessed valuation, notwithstanding the fact that said school district was later organized into a consolidated district.

Very truly yours,

APPROVED:

J. E. TAYLOR
Assistant Attorney-General.

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

JET/afj