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TAXATION: Authority to issue bonds for construction of school-  
SCHOOLS: house carries with it the authority of directors to  
impose a tax for sinking fund and interest in addition  
to the rate for current purposes.

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Honorable Joseph N. Brown  
Assistant Prosecuting Attorney  
Greene County  
Springfield, Missouri

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Dear Sir:

This is in reply to your letter of recent date, wherein you state that an election has been held in a common school district and authority granted to the directors to issue and sell bonds for the erection of a school building, and request an opinion on the authority of the directors to increase the rate of taxation so as to provide a sinking fund and interest to retire the bonds and pay the interest thereon as same falls due. You also state that it is claimed by some that the rate of taxes, including the sinking fund and interest rate, may not be above 65% on the hundred dollars assessed valuation without approval of voters.

The authority for levying and collecting taxes for school district purposes must be derived from the Constitution and statutes. We will first refer to the constitutional provisions applicable here. Section 11(a) of Article X of the Constitution of Missouri, 1945, provides as follows:

"Taxes may be levied by counties and other political subdivisions on all property subject to their taxing power, but the assessed valuation therefor in such other political subdivisions shall not exceed the assessed valuation of the same property for state and county purposes."

Section 11(b) of Article X of the Constitution of Missouri, 1945, provides as follows:

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

"For municipalities--one dollar on the hundred dollars assessed valuation;

"For counties--thirty-five cents on the hundred dollars assessed valuation in

counties having three hundred million dollars, or more, assessed valuation, and fifty cents on the hundred dollars assessed valuation in all other counties;

"For school districts formed of cities and towns--one dollar on the hundred dollars assessed valuation, except that in the City of St. Louis the annual rate shall not exceed eighty-nine cents on the hundred dollars assessed valuation;

"For all other school districts--sixty-five cents on the hundred dollars assessed valuation."

These sections are the constitutional authority for boards of directors of school districts to impose taxes without voter approval. These taxes are those which are levied for the purpose of raising revenue for the district for the payment of teachers, current expenses, etc. But if funds are needed for the purchasing of school sites and erection of schoolhouses, and if the revenue obtained under the levy authorized by said Section 11(b) of Article X is not sufficient, then the voters can authorize additional indebtedness for such purpose. This is the procedure apparently followed by the voters in the district for whom you are making this inquiry.

The constitutional authority for incurring this debt is found in Section 26(b) of Article VI of the Constitution of Missouri, 1945. This section provides as follows:

"Any county, city, incorporated town or village, school district or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per centum of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

The source of this section is Section 12 of Article X of the Constitution of Missouri, 1875.

Supplementing this constitutional provision is Section 10331, Laws of Missouri, 1945, page 1703, which provides as follows:

"The loan authorized by Section 10328, Revised Statutes of Missouri, 1939, shall not be contracted for a longer period than twenty years, and the entire amount of said loan shall at no time exceed, including the present indebtedness of said district, in the aggregate five per centum of the value of taxable tangible property therein, as shown by the last completed assessment for state and county purposes, the rate of interest to be agreed upon by the parties but in no case to exceed the highest legal rate allowed by contract; when effected, it shall be the duty of the directors to provide for the collection of an annual tax sufficient to pay the interest on said indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within the time said principal shall become due."

(Underscoring ours.)

This provision seems to answer your question as to the duty of the board to provide for the collection of the annual tax sufficient to pay the principal and interest on the loans as they fall due. Section 10336, R. S. Mo. 1939, provides as follows:

"Boards of directors are hereby authorized to make an estimate for the levy of a tax upon all the taxable property of the school district at its assessed valuation, said tax to be levied and collected as other taxes for school purposes--said tax to be sufficient in amount to pay the annual interest on all bonds of their respective districts, and to pay for the printing or engraving of any bonds that may be issued by virtue of this chapter."

This is further authority for the board to levy and impose a tax sufficient to pay the principal and interest as it falls due.

The foregoing constitutional provisions for incurring indebtedness by school districts are similar to those of the 1875 Constitution and what the courts have said about these provisions in the 1875 Constitution are applicable here.

In the case of Benton vs. Scott, 168 Mo. 379, the court, in speaking of the duty of a school board to provide an annual tax for the sinking fund and interest on bonds issued under Section 12 of Article X of the Constitution of Missouri, 1875, said, l.c. 394:

"By force of this constitutional authority to incur indebtedness, follows the inevitable concomitant, the levy of a tax to pay the interest annually and a sinking fund to pay the principal. So imperative is the command that without farther legislation the school district incurring a debt by issuing bonds could provide for the interest and sinking fund without further legislative authority. \* \* \* "

At l.c. 395, the court further said:

"We think the true interpretation of section 12 of article 10 of the Constitution and the statutes already cited are that the authority conferred upon the board to issue the bonds, by the two-thirds vote of the taxpayers, carried with it the power in the school boards to provide the annual tax for the interest and sinking fund, and that it was a wise precaution to leave the rate for this purpose to be fixed annually by the board according to the needs of the district which should and necessarily must decrease as the bonds are one by one paid off."

Also in the case of Kansas City, Fort Scott & Memphis Railroad Company vs. Chapin, 162 Mo. 409, l.c. 415, the court, in discussing a similar question as to the authority of the directors of a school district to impose a sinking fund and interest fund tax, said:

"The defendant further contends that as in the certified estimates of twenty-four of the districts it does not appear that the 'sinking fund tax' and the 'interest

fund tax' were authorized by a vote of the taxpayers, the court erred in refusing to hold these taxes void. Sections 9757 and 9758, which authorize the boards of education to make estimates for the levy of these taxes do not require that such taxes should be sanctioned by a vote of the taxpayers. The provision in these sections that such taxes are 'to be levied and collected in the same manner as other taxes for school purposes' is not to be construed as a limitation upon the power, but simply as prescribing a mode by which the power is to be exercised. Nor does such a construction render these sections obnoxious to the provisions of article 10, section 11, of the Constitution, which is there dealing with 'annual rates for school purposes,' and not with an existing indebtedness, nor with a tax to be levied to raise funds for the payment of such indebtedness or the interest thereon."

(Section 9758 referred to, supra, is the same as Section 10336, R. S. Mo. 1939.)

We think the foregoing constitutional provisions, statutory provisions and decisions of the court are ample authority for boards of directors of common school districts to impose taxes for the purpose of paying sinking fund and principal on outstanding bonds as they fall due, and that such rates may be in addition to those authorized for the purpose of raising funds for current operations and that such rates may be imposed without authority from the voters, in addition to that authorized at the bond election.

#### CONCLUSION

From the foregoing, it is the opinion of this department that boards of directors of common school districts may impose an annual tax sufficient to create a sinking fund and pay the annual interest on outstanding bonds, and that such rate may be imposed without further authority from the voters other

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than that granted at the bond election, and that this rate may be in addition to the maximum 65¢ rate authorized by the Constitution for current operations of the school district.

Respectfully submitted,

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APPROVED:

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TWB:VLM