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TAXATION:
SCHOOLS:
ELECTIONS:

Tax levy voted to increase taxes for construction of new school building can be earmarked for construction of such building. Additional levy may be voted at subsequent election if necessary for construction of school building. Notice of purpose of increase and rate of increase is sufficient to earmark taxes received from such levy.

3-29
March 22, 1948

FILED

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Honorable William Lee Dodd
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading as follows:

"The Doniphan Consolidated School District plans to vote a tax levy under Section 10358, page 22, of School Laws of 1947 to build a new elementary school building. They wish to vote this levy and hold it over a number of years (4 years) until enough is raised to build the school building. They wish to earmark it so it can only be used to build this elementary school building and for no other purpose. Can this levy be earmarked for this purpose and thereby be used only for said purpose?"

"Now suppose 4 years is not long enough to raise enough money and they vote another levy to run 4 years longer. Can this new levy also be earmarked for purpose of building a new elementary school and lumped with the first levy so earmarked and only be used for said purpose?"

"If said purpose is stated in the school election notices, will this legally earmark the money so raised by said levy for said purpose so stated in said notices?"

Section 10358, Laws of Missouri, 1945, page 1629, provides as follows:

"Whenever it shall become necessary, in the judgment of the board of directors or board

of education of any school district in this state, to increase the annual rate of taxation, authorized by the constitution for district purposes without voter approval, or when a number of the qualified voters of the district equal to ten per cent or more of the number casting their votes for the directors of the School Board at the last school election in said district shall petition the board, in writing, for an increase of said rate, 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, and shall submit to the qualified voters of the district, at the annual school meeting or election, or at a special meeting or election called and held for that purpose, at the usual place or places of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board; due notice having been given as required by Section 10418; and if two-thirds of the qualified voters voting thereon 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 by the clerk or secretary of such board or district to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all taxable property, real and personal, of such school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants as provided by law."

Section 10419, Laws of Missouri, 1945, page 1632, provides, in part, as follows:

"The qualified voters assembled at the annual meeting, when not otherwise provided, shall

have power by a majority of the votes cast:

* * * * *

"Fifth--To determine, in accordance with Section 10358, what rate of taxation, if any, in excess of that authorized by the constitution without voter approval, shall be levied on the hundred dollars valuation for district purposes, including the rate necessary to purchase a site, erect a schoolhouse thereon and furnish the same.

* * * * *

Section 10366, Laws of Missouri, 1943, page 893, provides, in part, as follows:

"All school moneys received by a school district shall be disbursed only for the purposes for which they were levied, collected or received. There is hereby created the following funds for the accounting of all school moneys: Teachers' Fund, Incidental Fund, Free Textbook Fund, Building Fund, Sinking Fund, and Interest Fund. * * * * * All money derived from taxation or received from the state for the erection of school buildings, from sale of school sites, schoolhouse or school furniture, from insurance, from sale of bonds, shall be placed to the credit of the 'Building Fund'. * * * "

Since Section 10419, supra, provides that the voters at the annual school meeting shall vote upon the rate of taxation in excess of that authorized by the Constitution without voter approval, including the rate necessary to purchase a site, erect a schoolhouse thereon and furnish the same, and such election is in accordance with Section 10358, supra, which provides for the voting of an increase in the tax rate, and provides that the board shall determine the purpose or purposes for which the 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 the proposed excess rate is to be effective, such sections authorize the submission to the voters of a proposition to increase the tax levy for a period of not to exceed four years for the purpose of raising money to build a new school building.

Section 10366, supra, provides for the placing to the credit of the "Building Fund" of all money derived from taxation for the erection of school buildings. Since the taxes that would be collected from a levy voted in accordance with Section 10358, supra, for the erection of a new school building would be placed in the "Building Fund," such fund could be used for no purpose other than the erection of a new school building.

Therefore, if at the end of the period for which the increased taxes for school building purposes were voted, there were insufficient funds to construct a new school building, the fund would remain intact, and any moneys voted at another election for the purpose of erecting a new school building would be added to the existing funds in the "Building Fund" and all of such funds authorized at such elections could be used only for the purpose of constructing a new school building.

Notice of the specific purpose of the rate of the increase and the number of years for which such rate of increase is to be voted, given by the board as provided in Section 10358, supra, will earmark the money collected from the levy voted at such election for the purpose for which such money was voted.

CONCLUSION

It is the opinion of this department that under the provisions of Section 10358, Laws of Missouri, 1945, page 1629, and Section 10419, Laws of Missouri, 1945, page 1632, when a tax rate increase is voted for a number of years, not to exceed four, for the purpose of constructing a new school building, the funds derived from such tax rate increase are earmarked for that specific purpose under the provisions of Section 10366, Laws of Missouri, 1943, page 893, and such funds cannot be used for any other purpose.

It is further the opinion of this department that if insufficient funds are raised from such a tax rate increase during the period for which the rate of increase was voted, a new levy can be voted for a number of years, not to exceed four, and the money derived from such tax levy may be added to that derived from the previous levy, and all of such money can be used only for the purpose of constructing a new school building.

It is further the opinion of this department that notice of the purpose of the rate of increase and the number of years of such

Honorable William Lee Dodd

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increase, as required by Section 10358, supra, is sufficient to earmark the money derived from such levy so that it can be expended only for the purpose for which voted.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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