

TAXATION: Cannot increase rate of taxation for school purposes
SCHOOLS: at school meeting unless notice of such proposition
is given.

MAGISTRATE Warrant must issue forthwith when information filed
COURTS: unless defendant is voluntarily present at that time.

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Honorable Marvin C. Hopper
Prosecuting Attorney
Linn County
Brookfield, Missouri

Dear Mr. Hopper:

This is in reply to your letter of recent date requesting the opinion of this department on two questions, which are as follows:

"(1) Under the provisions of Section 10,358, Reenacted Laws 1945, can a 2/3 majority of the qualified voters at the annual school meeting vote to increase the tax rate above the amount authorized by the constitution without voter approval when the notice of the annual meeting was given as directed by Section 10418 but did not state therein that such proposition would be voted on at said meeting?"

"(2) When a person voluntarily appears before a Magistrate to answer to a criminal charge or appears before a Magistrate after having received a 'ticket' from a highway patrolman requesting him to do so, is it mandatory that the Magistrate issue a Summons for the arrest of the party or may this be dispensed with?"

The Laws of Missouri, 1945, page 1629, Section 10358, providing the procedure by which the annual rate of taxation authorized by the Constitution may be increased for school purposes, is 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." (Underscoring ours.)

According to the above statute, the notice required is notice of the proposition to increase the rate of taxation. The language of the statute is clear and unambiguous and must be given effect as written under the rules of statutory construction. The purpose of such notice is to inform the voters of the proposition to be acted upon at the meeting or election. In State ex rel. School Dist. of Affton v. Smith, 80 S.W. (2d) 858, the Supreme Court of Missouri, sitting en banc, said at page 860:

* * * It appears from respondent's return that the minutes of the school board show that the board instructed the clerk to post notices of the annual meeting and include therein the proposition of consolidation of the school district. The records kept by the board do not show the contents of the notice which was given, and neither the notice nor a copy thereof is in the possession of the board. In the absence of a showing to the contrary, we will presume that the clerk performed his official duty and gave the notice which the board instructed him to give; that is, a notice submitting the proposition of consolidation of the school district. Such a notice would not authorize the voters when assembled at the annual meeting to vote upon a proposition to organize the common school district into a town or city school district. The two propositions are so radically different that notice of the submission of one would not authorize a vote upon the other. The purpose of a notice is to inform the voters of the propositions to be acted upon at the meeting. Where, as in this case, the statute * * * requires a notice to be given, any action taken by the voters without notice or with an insufficient notice is void. * * *

Said proposition may be submitted to the voters of the school district at the school meeting when included in the notice of such meeting. Any action taken by the voters without notice or with insufficient notice is void. In Peter v. Kaufmann, 38 S.W. (2d) 1062, the court said at pages 1064 and 1065:

"As to plaintiff's contention that no proper notice had been given embodying these propositions to be voted on at the annual meeting in April, 1927, at which meeting these levies were voted, his contention seems to be only that the school board did not specifically order notices to be posted embodying these propositions to be voted on. * * * * *

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" * * * the school board is required to determine the increased rate and submit the question of increase to a vote of the taxpayers, and this may be done at the annual meeting when included in the notice thereof. * * *

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"It is these notices which the voters see and consult in order to determine what propositions are to be voted on and decided at the annual meeting, and, if the notices impart intelligent information as to this, that is all that is required."
(Underscoring ours.)

Therefore, the voters of a school district are not authorized, under the provisions of Section 10358, supra, to vote on the proposition to increase the rate of taxation authorized by the Constitution for school purposes, at the school meeting, unless notice that said proposition is to be submitted is included in the notice of such meeting.

We now consider the second question presented. Prosecutions before magistrates for misdemeanors are by informations made by the prosecuting attorney of the county in which the offense may be prosecuted (Laws of Missouri, 1945, page 750, Section 2). The filing of such information has the effect of instigating criminal prosecution. This was recognized by the Supreme Court of Missouri in Ex Parte Bedard, 106 Mo. 616, l.c. 622:

" * * * The determination of the question here hinges upon the scope and meaning of

the words 'criminal prosecution,' as used in section 4174, supra. We have no doubt they include a criminal information for a misdemeanor, * * *"

Until an information has been filed in the magistrate court no prosecution has been commenced and the magistrate has no jurisdiction in the matter. Upon the filing of an information by the prosecuting attorney it is the duty of the magistrate to forthwith issue a warrant for the arrest of the defendant (Laws of Missouri, 1945, page 750, Section 5).

The purpose of having a warrant issued and served is that the court may acquire jurisdiction over the person of the defendant. However, we must consider the case where a person voluntarily appears before the magistrate at the time the information against him is filed. In such a case a warrant would serve no purpose. There would be no need for a warrant to be issued commanding the proper officers to bring the defendant before the court. The defendant would already be before the court and under its jurisdiction. The reason for or purpose of a warrant would not be present. We do not believe it is the contemplation of the law to require the performance of an unnecessary or useless act. In the case of State of Missouri v. William Cook, 58 Mo. 546, it was said at page 547:

"It is shown that at the time the indictment was returned the defendant was in court, and pleaded not guilty; he then gave a bond for his appearance, and petitioned for a change of venue, which was awarded in accordance with his application. Under these circumstances, no capias for his arrest was necessary. It would have been an idle and unmeaning ceremony. * * *"

Therefore, where a defendant is present before the magistrate court at the time the information is filed, the issuance of a warrant for the arrest of said defendant may be dispensed with by the magistrate.

Conclusion.

In view of the foregoing, it is the opinion of this department that the proposition to increase the rate of taxation

authorized by the Constitution for school purposes cannot be submitted at the school meeting unless notice of the submission of said proposition is included in the notice of such meeting.

It is further the opinion of this department that when an information is filed it is the duty of the magistrate to forthwith issue a warrant for the arrest of the defendant; however when the defendant is voluntarily present before the magistrate at the time the information is filed a warrant need not be issued.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General *JTB*

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