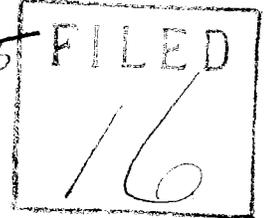


SCHOOL DISTRICTS:-District organized under Sections 9325 and 9326, R. S. Mo. 1929, may, by vote, increase tax levy not to exceed \$1.00 on the \$100 valuation, and where district contains incorporated village the requirements of Section 9194, R. S. Mo. 1929, are fully met, even if it be held that said Section applies in respect to the amount of levy.

June 12, 1934.

Mr. David R. Clevenger,
Prosecuting Attorney,
Platte City, Missouri.



Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I have before me a letter of yours dated May 19th, addressed to Mrs. Alice Scrivner of District Number 74, located in this county near Parkville, Missouri. The district has asked that I write for an official opinion of your office relative to the matter which you discussed in this letter of the 19th.

"Undoubtedly some of the facts were not given to you and I thought best to advise you of these before you wrote your opinion on this. I wish to call your attention first to Sections 9325 and 9326. You will note that at first set out of Section 9325 the wording is as follows: - '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 situate.' Now, District Number 74 was undoubtedly organized under this section and also Section 9326, and it is true there are two villages incorporated within the boundaries of this district now and also at the time of its organization, the plats being filed and of record at the time of organizing. Although, it is true that they were not organized under the town and village act and are not organized at this time under that act.

"That being true, I do not see how the case of Brown vs. Woods could possibly apply or any other decision as far as

that is concerned which I am able to find. If this is true, that is, is that all that is necessary to have a village within confines of the district irrespective of corporation (and it must be admitted that the statute does not state that it must be an incorporated town or village). Then undoubtedly under Sections 9325 and 9326, this district does not offend the constitutional provisions relative to levys and, therefore, can legally levy a one hundred cent on the One Hundred Dollars valuation.

"If I am correct, kindly advise me. I would appreciate your earliest possible reply to this as this matter is vital at this time in making up the tax returns and the clerk is holding this matter up until a decision can be had. For your information District Number 74 was organized under Sections 9325 and 9326 as a six-director school in the month of June, 1931."

Previously Mrs. Alice Scrivner of near Parkville, Missouri made an inquiry about this same proposition. While we could not render her an official opinion we did answer her letter. However, she did not state sufficient facts for us to be in a position to definitely decide the matter for her. The facts stated in your letter are as follows: That this school district was organized under Sections 9325 and 9326, R. S. Mo. 1929; that there were two incorporated villages within the boundaries of the district at the time of the organization; that the plats of the villages were on file and of record at the time of the organization and that the district was organized as a six-director district. You inquire whether, under the facts stated, it is legal for your district to levy a tax of \$1.00 on the \$100 valuation. Section 11 of Article X of the Constitution of Missouri, among other things, provides 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 for 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 9325, R. S. Mo. 1929, among other things, provides:

"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 ex rel. Reynolds, v. Rickenbrode, 4 S. W. (2d) 436, which was decided by the Supreme Court en banc, a suit was brought by the collector to enforce the State's lien for taxes against land situated in consolidated school district No. 4 of Livingston County. The school district had voted a levy of 100 cents on the \$100 valuation for school taxes. The defendants contended that Section 11 of Article X of the Constitution the limit which could be voted for taxes was 65 cents on the \$100 valuation. The district was organized under Sections 11236 and 11237, R. S. Mo. 1919, which are the same sections as 9325 and 9326, R. S. Mo. 1929. The court held that the district was organized as a town district and that it could levy a tax by vote up to \$1.00 per \$100 valuation. The court says at page 437:

"The town of Avalon is situated in the district, but is not incorporated. The district has six directors and appellant claims that it comes, therefore, within the second class, a consolidated school district; that this is a legislative interpretation of the Constitution which makes school districts formed of cities or towns apply only to towns which are incorporated."

"At that time sections 11236 and 11237, R. S. 1919, were in force. They were enacted in 1895, and appeared in the Revised Statutes of 1909, in almost the same form as they appear in the Revised Statutes of 1929. Section 11236 provides that any common school district containing within its boundaries a

city, town or village, a plat of which has been filed in the recorder's office of the county in which the same is situated, or any district having 300 or more children of school age, by the last enumeration, may be organized into a city or town school district."

"In State ex rel. Buck v. Railroad, 263 Mo. 689, 174 S. W. 64, a suit to collect taxes voted beyond the 65-cent limit, the court construed the expression, 'Formed of cities and towns.' It was held that the expression did not mean that the district should be formed exclusively of cities or towns, but it might include contiguous territory outside the city limits. The opinion quotes what is now section 11236, providing that any city, town or village, the plat of which has been previously filed, etc., may be organized * * * nothing is said in the opinion about the necessity of the town being incorporated; and a judgment for taxes in excess of the 65-cent limit was affirmed."

"In State ex rel. v. Gill, 190 Mo. 79, 88 S. W. 628, a proceeding to oust directors of a certain school district which had been organized under a statute which was the same as section 11236, R. S. 1919, it was held that the statute applied to an unincorporated as well as to an incorporated village. The district in the village, together with the territory which was attached to the district, was organized as provided in the act. It was held that the organization was legal. The opinion points out that the act had previously contained the word 'incorporated' preceding the word 'city' but it was amended in 1870, eliminating the word 'incorporated.'"

"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."

In view of the foregoing decisions and citations contained therein we believe that it is immaterial whether or not the villages are incorporated so far as the right to organization under Sections 9325 and 9326 is concerned. It appears that this district was organized under the foregoing sections as a town district. Under Section 11 of Article 10 of the Constitution districts formed of cities and towns may, by vote, increase the tax levy, not to exceed 100 cents on the \$100.00 valuation. Under the case of State ex rel. Buck v. Railroad, quoted above, it is not necessary that the district consist exclusively of cities and towns, but districts may still be town districts even though they include contiguous territory outside of the city limits. We do not believe that Section 9194, R. S. Mo. 1929, which was formerly Section 11123, R. S. Mo. 1919, changes the situation so far as the validity of this tax levy is concerned. It was inferentially so held in the case of State ex rel. Reynolds v. Rickenbrode, above quoted.

Section 9194, R. S. Mo. 1929, classifies schools and section 3 of the Section provides as follows:

"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."

Since there were incorporated towns within the boundaries of your district at the time of its organization, even under Section 9194 the district would be a town district within the provisions of the above constitutional provision. This district was organized under Sections 9325 and 9326, R. S. Mo. 1929 which provide for the organization of town school districts. While those sections do not make any requirement as to the district containing an incorporated city, such as Section 9194 requires, yet, as a matter of fact, the district did and does now contain incorporated villages within its boundaries and we believe that the constitutional and statutory requirements were met to the extent that by proper vote the district may increase its tax levy not to exceed 100 cents on the \$100.00 valuation.

It is therefore the opinion of this Department that under the facts as set forth in your letter the district in question could legally vote a levy of not to exceed \$1.00 on the \$100.00 valuation.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

FWH:MS.