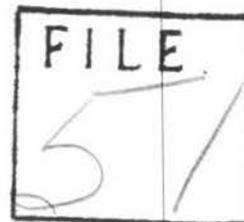


SCHOOLS: Special election can be held under Section 10358 to increase tax levy after the annual election has been held.

June 13, 1942

Honorable Don Land  
County Clerk  
Cass County  
Harrisonville, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion from this office, which request is as follows:

"I have a rural school Dist. that wants to hold a special election to vote more levy for their Dist.

"They voted 40c levy and have it filed and I have the book extended and added.

"What I want to know can they hold a special election and vote more levy to be extended on the tax book, or is there a certain time that they have to get the levy filed in this office.

"Of course I can erase the tax I have already extended if it is legal for them to vote the extra levy this lade. I can't find any law only that they can hold a special election but can't find, if there is any certain time for them to hold the election."

The legal procedure provided by law for levying taxes for maintaining rural schools is as follows: "The voters at the annual meeting determine the rate, if any, in excess

of forty cents on the one hundred dollar valuation to be levied for school purposes." (Section 10419) Thereon the Board of Directors, on or before May 15th, forwarded to the County Superintendent an estimate of the amount of funds necessary to maintain the schools of their district, and the rate required to raise said amount (Section 10347). The County Superintendent then approves the estimate and turns same over to the County Clerk (Section 10612), and the County Clerk prepares the tax book and extends the taxes thereon.

However, Section 10358, R. S. Missouri, 1939, reads 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 for school purposes, or when any five resident taxpayers of such district shall petition such board, in writing, that they desire an increase on the rate of taxation, such board shall determine the rate of taxation necessary to be levied in such district within the maximum rates prescribed by the Constitution for such purposes, and shall submit to the voters of said school district who are taxpayers of such school district, at an election to be by such board called and held for that purpose, at the usual place of holding elections for members of such board whether the rate of taxation be increased as proposed by said board, due notice having been given as required by section 10418; and if a majority of the voters who are taxpayers voting at such election on the proposition to increase levy shall vote in favor of such increase, the result of such vote, and the rate of taxation so

voted in such district, 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 the receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all the 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."

It will be noted that no time limit is set in Section 10358, for the holding of the election to vote on increasing the levy. The section merely provides that, "whenever it shall become necessary \* \* \* to increase the annual rate of taxation for school purposes," the board shall determine the rate of taxation necessary to be levied, and also call an election for the purpose of testing the sense of the voters on the proposed increase. The section does not require that such election be held before the board is required to submit the estimate to the County Superintendent, nor is any other time set within which such election must be held.

The Supreme Court of Missouri, in the case of Benton v. Scott, 168 Mo. 378, had before it the question of when an increase over forty cents levy could be voted. What was then Section 9777 is now Section 10358 (except that section 9777 provides that ten taxpayers could require an election to be held, whereas section 10358 provides that five taxpayers can require such an election), and what was then Section 9750 is now Section 10419. In considering that question, the court said, l. c. 390:

"Section 9777, Revised Statutes 1899 on its face discloses that it is a provision for a special, not an annual meeting. That section looks to a condition when the board in its judgment

deems it necessary to increase the rate, and the meeting is only authorized to pass upon those things for which it is called. Such a meeting is not to determine the rate but to increase that already determined at the annual meeting."

Again, at page 391, the court said:

"The statutes now in force provide for three distinct methods for having an election to vote on the increase of the tax rate:

"First, when the voters in annual meeting see fit to so order.

"Second, when a special meeting is called by the board of its own motion.

"Third, when the board calls a special meeting for that purpose at the request of ten taxpayers."

It will be seen that the court held that the annual tax rate is determined at the annual school meeting, and that any increase in that rate would be voted at a special election held thereafter. Reference to Section 10358 will show that the increase referred to is an increase in the annual rate. Such annual rate must have been determined before an increase in it can be voted on. Therefore, it would seem that Section 10358 was designed to provide a method of increasing a tax rate which had previously been set. It is entirely probable that conditions might arise after the annual school meeting which would make it apparent that the tax rate voted at such annual meeting would be insufficient to produce enough revenue to maintain the schools, and the Legislature has made provisions to meet such a

situation.

Therefore, if the district in question holds a special election in accordance with Section 10358, and the clerk of the district certifies to you that a specific rate has been voted by a majority of the voters, who were taxpayers, it would be your duty, under said section 10358, to "proceed to assess and carry out the amount so returned on the tax books on all the taxable property \* \* \* \* \*."

CONCLUSION

It is, therefore, the opinion of this office that a school district can hold a special election under the provisions of Section 10358, R. S. Missouri, 1939, and that if, upon said election, an increase is voted in the tax rate and such information is certified to the county clerk, the county clerk must extend the tax for said district upon the tax book in accordance with such increased rate.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK  
Attorney-General

HHK/rv