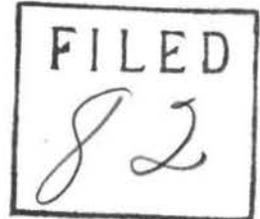


VOTER:  
FOR RAISE OF  
SCHOOL LEVY:

Voter to qualify for voting to raise the annual school levy must have all of the general qualifications as to age and residence, and in addition, must be a resident taxpayer.

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Mr. Glen Simpson, Superintendent  
Sullivan County Public Schools  
Milan, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion addressed to this office March 20th.

"The question of whether or not a voter, who is not a taxpayer in the district, may vote to raise the levy in excess of 20¢ has arisen.

"Section 10420 defines a qualified voter without reference to his being a taxpayer.

"Section 10460 states that the levy may be raised by a majority of the voters who are taxpayers in the district.

"Will you please clarify this question for me as soon as possible. I would like to have your opinion before annual school meeting day, April 6th."

The authority for the proposition that the State may prescribe qualifications for voters may be found in the following, Blair v. Ridgley and Thompson, 41 Mo. 63:

"Outside of society, and disconnected with political society, no person has or can exercise the elective franchise as a natural right, and he only receives it upon entering into the social compact subject to such qualifications as may be prescribed by the State or body politic. The State of Missouri having sovereign power to regulate its own internal government, and to prescribe the qualifications which shall authorize any

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inhabitant to exercise the elective franchise therein \* \* \* \* \*

As to the general qualifications of voters in the State, your attention is directed to Section 11469 R. S. Missouri, 1939, which reads as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall be entitled to vote at all elections by the people \* \* \* \* \*

Section 10420 R. S. Missouri, 1939, concerns itself principally with the qualifications of directors for school boards, and further provides and sets out the qualifications for voters within the meaning of the laws applicable to common schools. The question raised in the second paragraph of your letter is answered in the last sentence of this same section which reads as follows:

"A qualified voter within the meaning of this chapter shall be any person who, under the general laws of this state, would be allowed to vote in the county for state and county officers, and who shall have resided in the district thirty days next preceding the annual or special meeting at which he offers to vote."

Concerning the second section of the Revised Statutes quoted in your letter, that is, Section 10460 Revised Statutes of the State of Missouri, which concerns itself with the levies and assessments to be voted upon by a majority of the voters who are taxpayers of the district voting thereon. The exact language and the portion of the statute which applies to your inquiry is as follows:

"If any district obtaining the minimum guarantee as provided for herein levies in excess of twenty cents on the one hundred

dollars assessed valuation for school purposes (teachers' wages and incidental expenses), without such levy in excess of twenty cents on the one hundred dollars assessed valuation for school purposes (teachers' wages and incidental expenses) be authorized by a majority of the voters who are taxpayers of the district voting thereon \* \* \* \* \*

To continue the examination of the statutes concerning laws applicable to all classes of schools, we find the further provision at Section 10358 R. S. Missouri, 1939, which 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 \* \* \* \* \*

On the question as to who is a taxpayer under the statutes quoted, your attention is invited to the following authorities, 61 Corpus Juris 170, paragraph 123 points out:

"Generally speaking every person who subjects himself or his property to the jurisdiction of the state comes within its taxing power, and every property owner holds his title subject to the sovereign's right of taxation. Liability to taxation is, however, based upon the individual's reciprocal enjoyment of the benefits of government, and persons who are clearly beyond reach of governmental benefits are likewise beyond the scope of the taxing power."

Upon an examination of the cases bearing upon the question of who is a qualified voter and who is a taxpayer, we turn to the following decision, State ex rel. Sutton v. Fasse, 88 S. W. 1, 189 Mo. 532. This case held that a school director must be a citizen of the United States, a resident taxpayer and qualified voter of the district, and must have paid a state and county tax within one year preceding his election. The decision further states that the statutes bearing on the subject above mentioned, and I quote, "Statutes bearing on this subject must not be so construed as to have unreasonable consequences."

This question is further discussed in State ex rel. Mitchell v. Heath, 345 Mo., 1. c. 230, and I quote:

"Section 9287, Revised Statutes 1929, provides that common school districts shall be governed by a board of three directors 'who shall be citizens of the United States, resident taxpayers of the district (21 years of age), and who shall have paid a state and county tax within one year next preceding his, her or their election, and who shall have resided in this state for one year next preceding, his, her or their election.' The decisive question here is whether or not respondent, under the admitted facts, has

complied with the above italicized part of the section prescribing qualifications essential to his eligibility to the office of school director. (Sec. 9328, R. S. 1909, prescribes this same qualification for directors of City, Town and Consolidated schools; see also Secs. 9517 and 9572, R. S. 1929, for qualifications in larger cities where strangely this requirement is relaxed or abolished.) It should also be noted that substantially the same provision is made concerning qualifications of members of both houses of the General Assembly. (Const., Art. 4, Secs. 4 and 6). The evident purpose of this requirement is to have such officers, who impose taxes on others and determine how they shall be spent, chosen from among those citizens who have been paying, and will likely continue to pay, taxes. It is said, however, that such 'statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers.' (46 C. J. 937, sec. 32.) The Missouri decisions have given a liberal construction to this and similar sections prescribing requirements of eligibility to elective offices."

Further defining taxpayer we find in *Castilo v. State Highway*, 312 Mo. 244, 279 S. W. 673 the following definition:

"Taxpayer is defined as a person charged with tax, a person owning property in the state subject to tax and on which he regularly pays taxes."

Sustaining the above, we further quote *State ex rel. Barrett and Newman v. Clements*, 305 Mo. 297, 264 S. W. 984, and *State ex rel. Bellamy and Harris v. Menengali*, 270 S. W. 101, 307 Mo. 447.

The next matter for determination concerns the proposition whether a general statute covering the qualifications

of a voter will govern in the instance inquired into or should a special statute which provides additional qualifications for voters at the annual election for raising the school levy obtain? In answering this question as to whether the general or special statute is to prevail, the following decisions of the State are given for your consideration:

"Two statutes relating to same general subject matter should be read together and harmonized, if possible, with view to giving effect to consistent legislative policy; but, to extent that statute which deals with common subject matter in particular way will prevail over earlier statute of more general nature." State v. Mangiaracina, 125 S. W. (2d) 58, 344 Mo. 99.

"Two statutes relating to same subject must be read together, and provisions of one having special application to particular subject will be deemed a qualification of or 'exception' to other statute general in its terms." Eagleton v. Murphy, 156 S. W. (2d) 683, 138 A. L. R. 749.

"Statutes in pari materia should be read and construed together in order to keep all provisions of law on same subject in harmony, so as to work out and accomplish Legislature's central idea and intent." State ex rel. Lefholz v. McCracken, 95 S. W. (2d) 1239, 231 Mo. App. 870.

#### CONCLUSION

The conclusion at which we arrive in the light of your inquiry and the authorities quoted above is as follows:

That in providing for the qualifications for voters who may vote on annual levies and assessments under Section 10460, Revised Statutes of the State of Missouri, require, first, that any person twenty-one years or over residing in the State more than one year and in the county, city or town sixty days, and in the district thirty days, AND IN ADDITION,

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taxpayer of the district, may vote at the annual election to raise the said levy.

That the special statute, Section 10460 Revised Statutes of the State of Missouri will take precedence over and above the general statute, Section 11469 Revised Statutes of Missouri, 1939, and Section 10420 Revised Statutes of the State of Missouri.

Further that the qualifications to raise the levy at the annual election for voters requires the voter to be a taxpayer. The two general statutes in which persons may vote require age and residence as a qualification for voters who wish to vote for state and county officers and for school directors, and it would seem that the higher qualifications for voters at the annual election to raise the levy is entirely consistent with the statutes and authorities quoted above.

Respectfully submitted,

L. I. MORRIS  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

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