

COUNTY LIBRARY DISTRICTS:

District should not include territory of a school district supporting a public library by school taxes. Manner and time of conducting election on library proposition and qualification of voters.

February 1, 1945



Honorable J. Marcus Kirtley  
Assistant County Counselor  
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Independence, Missouri

Dear Sir:

This department acknowledges receipt of your letter of recent date, directed to the Office of the Attorney General, in which you requested an opinion on the County Library Districts Law, Sections 14767 - 14776, R.S. Mo. 1939, relative to the creation of a County Library District in Jackson County, Missouri. You state that:

"The Kansas City, Missouri School District embraces considerable territory outside the corporate limits of Kansas City. The Kansas City, Missouri Board of Education maintains a public library supported by the school taxes. Do those people residing in said school district outside the city limits of Kansas City have the right to vote on the library proposition and to be included in the district. In other words, are the people residing in said district and outside the limits of Kansas City already supporting a public library supported by taxation, or does the statute contemplate to be so excluded there must be a direct library tax?

"Section 14767 provides that said proposition shall be submitted to the voters at the annual election to be held on the first Tuesday in April and provides for voting in district school houses. The only election to be held in April in this

County is the annual school election as provided by Section 10418 R.S. Mo. 1939 and Section 10469 R.S. Mo. 1939. The specific questions that I have on this matter are as follows:

"May the library proposition be submitted to the voters at the school elections, or must it be voted on in every precinct in the territory affected by reason of imposing an increase in the tax levy? If voted on in school districts, what officials conduct the election and during what hours of the day; is it limited to certain hours during the day, or must the polls be open all day, and are the officials who conduct it to be designated by the persons constituting the voters assembled at the annual meeting or separate officials designated for the purpose of conducting the election? If the latter is the case, who appoints said officials?"

"3. Section 14767 refers to qualified voters in the district. What are the qualifications for voters presenting themselves and offering to vote on such proposition?"

"4. Jackson County, Missouri, in the territory to be embraced in said district, is under the jurisdiction of the Jackson County Election Board, as provided by Section 11851, and subsequent Statutes, R. S. Mo. 1939. Are the duties imposed upon the County Clerk under Section 14767 reserved to the County Clerk, or are they conferred on the Election Board, and, if separate officials are necessary to officiate at the election, are they under the supervision of the County Clerk or the Election Board?"

We assume that the Kansas City, Missouri Board of Education public library was created under the provisions of Section 10695, R.S. Mo. 1939.

Section 14767 of the County Library Districts Law provides:

"Whenever one hundred (100) taxpaying citizens of any county, outside of the territory of all cities and towns now or hereafter maintaining, at least in part by taxation, a public library, shall in writing petition the county court, asking that a county library district of the county, outside of the territory of all such aforesaid cities and towns, be established and be known as '\_\_\_\_\_ county library district',  
\* \* \*"

Said section contemplates that the County Library Districts Law shall not apply to cities and towns maintaining a public library by taxation. We believe the fact that the public library there maintained is supported by school taxes and not by a direct library tax should not change the application of the exception in this Statute.

Section 3 of Article X of the Constitution of Missouri, provides:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

The people residing in said Kansas City, Missouri School District and outside the limits of Kansas City, are already supporting a public library supported by taxation, and should not be included in the new proposed library district in order that the procedure might not raise the question of the validity of the tax in view of Section 3 of Article X of the Constitution. Cooley on Taxation, Volume I, fourth edition, Section 225, states:

"Some State Constitutions expressly prohibit double taxation. Others require equality and uniformity in taxation and double taxation are wholly inconsistent."

In the case of State ex rel. Pearson, Collector, vs. Louisiana & Missouri River Railroad Company and Chicago & Alton

Railway Company, 196 Mo. page 523, 94 S.W. 279, the Court held that double taxation on the same property is not favored and is never presumed. Especially should this rule prevail, both as to legislative acts and in their application, where the Constitution contains an express provision requiring equality and uniformity in the imposition of taxes upon property. And where there is such a constitutional provision, as there is in this State, it will not be held that property, liable to be taxed under one provision of the statutes, was intended to be subject to another tax under general words in a statute which would seem to imply that it may be taxed a second time. Quoting Cooley on Taxation, this opinion states:

"It is a fundamental maxim in taxation that the same property shall not be subject to a double tax payable by the same party, either directly or indirectly;  
\* \* \*"

In the case of State ex rel. American Manufacturing Company vs. Keeln, 278 Mo. 28, 211 S.W. 31, the Supreme Court held that a tax levied and collected for a school district is an entirely different burden from the tax levied and collected for State purposes, even though a part of the State taxes so collected is in fact afterwards distributed by the State to school districts to be used in helping maintain the public school system. That case held that consequently an income tax levied for State purposes, under a statute which authorizes income taxes to be reduced only by the property taxes paid "to the State", does not amount to double taxation for school purposes. However, we believe that that case should be distinguished from yours because of a different state of facts. The opinion in that case quoting Cooley on Taxation stated:

"One of the elements of illegal double taxation is that 'the subject of taxation shall directly contribute twice to the same burden while other subjects of taxation belonging to the same class are required to contribute but once.' \* \* \*"

Section 14767, R.S. Mo. 1939, provides that said library proposition shall be submitted to the voters at the annual election to be held on the first Tuesday in April, and said election is the annual school election as provided by Section 10418, R.S. Mo. 1939. The County Library Districts Law provides that the library proposition may be submitted to the voters at such election at the nearest and most convenient district schoolhouse within said County Library District. In

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voting on said proposition in common school districts, the election should be held in conformity with the provisions of Section 10418, R.S. Mo. 1939. The school patrons attending select the officials to conduct the election commencing at 2:00 P.M. on the day of the annual meeting. In submitting the library proposition in town, city or consolidated school districts, the election is governed by the provisions of Section 10483, R.S. Mo. 1939, as amended by Laws of Missouri, 1943, page 885. The duties imposed upon the county clerk in Section 14767, R.S. Mo. 1939, are reserved to him, and not conferred on the Jackson County Election Board. See Section 11858, R.S. Mo. 1939, providing the Election Board Article does not apply to school elections.

Section 14767, R.S. Mo. 1939, provides:

"\* \* \* all voters, otherwise qualified and residing in such school district and outside the limits of such city or town, shall be eligible to vote on any proposition or matter of such library district, \* \* \*"

Such qualified voters, in our opinion, should merely meet the qualifications of Section 10420, R.S. Mo. 1939, which provides:

"\* \* \* 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."

We therefore are of the opinion that any person 21 years of age who has resided in the State of Missouri one year, in Jackson County sixty days, and in the school district where the proposed election is to be held, thirty days next preceding the date of the holding of the election at which he or she offers to vote, and is properly registered where registration is required, is a qualified voter within the meaning of Section 10420, R.S. Mo. 1939.

#### CONCLUSION.

From the foregoing, it is the opinion of this department:

1) That the territory of the Kansas City Missouri School District outside the corporate limits of Kansas City,

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should be excluded from the proposed County Library District, as the taxpayers of said district are already maintaining a public library, supported by school taxes, and that to so include said territory might raise a question as to the validity of the tax in view of Section 3 of Article X of the Constitution.

2) That the library election should be held at the annual school election on the first Tuesday in April.

3) That the library election may be voted on in the common school districts at the district schoolhouses, and in a city, town or consolidated district in the voting places designated by the School Board in accordance with Section 10483, R.S. Mo. 1939, as amended by Laws of Missouri, 1943, page 885.

4) That the manner of conducting said election will be governed in common school districts by Section 10418, and in a town, city or consolidated district by Section 10483, as amended supra.

5) That the County Clerk of Jackson County, Missouri, has the power to carry out the duties imposed on him by Section 14767.

6) That qualified voters entitled to vote at such election are persons who under the general laws of the State would be allowed to vote in the county for State and County officers, and who have resided in the school district for thirty days next preceding the annual school meeting.

Respectfully submitted,

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APPROVED:

HARRY H. KAY  
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