

SCHOOLS:

Present statutes concerning bond issues are in conflict with Constitution of 1945 and govern until July 1, 1946.

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October 26, 1945

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

We are in receipt of your letter under date of October 12, 1945, requesting our official opinion on a set of facts which may be briefly summarized, as follows:

A common school district voted for a bond issue on June 19, 1945. The bonds were printed and dated August 1, 1945. A question has arisen as to whether the indebtedness should be based on the assessment for 1942 or for 1943, and whether intangible personal property may be included in computing the assessed valuation for those years, since the new Constitution provides that the indebtedness may not exceed a percentage of the tangible taxable property in the county assessed for taxation purposes. The election was apparently called under the provisions of Section 12, Article X, of the Constitution of 1875, and Sections 10328, 10329, 10330 and 10331, R. S. Mo. 1939.

Section 10328, R. S. Mo. 1939, and the three subsequent sections present the complete plan for the issuance of bonds to erect or repair school buildings, pay off assessments made by other taxing authorities, relating to the maintenance of sewer and drainage systems, and to purchase schoolhouse sites. They were enacted to carry out the bonding and assessment plan set out in Section 12, Article X, of the Constitution of 1875. As originally enacted, Section 10331 immediately followed Section 10328, and the words "preceding section" in

the former referred to the latter section, the two intervening sections being enacted in 1931.

Section 10331 is, in part, as follows:

"The loan authorized by the preceding section shall not be contracted for a longer period than twenty years, and the entire amount of said loan shall at no time exceed, including the present indebtedness of said district, in the aggregate five per cent of the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes previous to the incurring of said indebtedness, * * * "

The wording of this statute has been discussed in several decisions in this state. The words "last assessment" refer to the last completed assessment as corrected and approved by the State Board of Equalization. In State ex rel. v. Wabash Railroad Co., 251 Mo. 134, we find the following, l. c. 142:

"The Supreme Court of Illinois (Culbertson v. City of Fulton, 127 Ill. 30), in construing a constitution which used the word 'last assessment,' held that said words meant the last completed assessment as corrected and approved by the State Board of Equalization, and not the assessment by the local assessor, whose work had not yet received the approval of said State Board of Equalization.

* * * * *

"In the case of Chicago, Burlington & Quincy Railroad Co. v. Village of Wilber, 63 Neb. 624, the Supreme Court of Nebraska construed the words 'last preceding assessment' to mean an assessment which had been completed by receiving the approval of all the agencies through which it was required to pass.

"We find the reasoning of the foregoing cases is sound, and that the county court of Montgomery county could not base its tax levies upon returns made by the officers of railroad companies, which returns had not been passed upon by the State Board of Equalization."

Also, in State ex rel. City of Dexter v. Gordon, 251 Mo. 303, we find reference to the phrase "assessment next before the last assessment." In that case the question for determination was whether a bond issue voted on the 5th day of August, 1912, was to be limited by the assessment made in 1910 or that made in 1909. The State Board of Equalization had not finally certified and equalized the assessment of taxable property made in 1911, and was still in session, actually completing its duties on the 1st day of September, 1912. The court determined that the assessment made as of June 1, 1909 must govern, stating, l. c. 309:

"The 'assessments' designated in the Constitution as necessary to be considered in determining the per centum of indebtedness, mean the two successive, antecedent, completed assessments made by the State Board of Equalization previous to the incurring of the indebtedness. (Culbertson v. Fulton, 127 Ill. 30, l. c. 37; Wilkinson v. Van Orman, 70 Iowa, 230; Prickett v. Marceline, 65 Fed. 469; Railroad v. Wilber, 63 Neb. l.c. 627.) This must be true, for until the State Board of Equalization has completed its labors the total amount of taxable property in any subdivision cannot be determined.
* * * *

"On completed assessments, therefore, the constituted authority of any subdivision must base its action in determining the per centum of indebtedness. By way of illustration, if it was proposed to authorize the incurring of an indebtedness in 1912, and the assessment as of June 1, 1911, had not been completed, the taking of the assessment as of June 1, 1910, as the basis, would not be

in compliance with the Constitution, for the reason that the assessment required to be taken is that of June 1, 1909."

The bonds were held to be void because in excess of the limits permissible under the 1909 assessment, although well within the limits permissible under the 1910 assessment.

This rule has been approved in the more recent case of State ex rel. Jamison v. St. Louis-San Francisco Ry. Co., 318 Mo. 285, where we find the following:

"The term 'last assessment' means the last completed assessment. * * *

"The term 'last assessment' is merely an arbitrary measuring rod which is not necessarily accurate at the time it is applied. In fixing the limit of indebtedness under Article X, Section 12, the 'assessment next before the last assessment' is used as the measuring rod, notwithstanding the actual assessed value in the taxing district may have markedly increased or decreased between the date of such 'assessment next before the last assessment' and the time when the particular bonds are voted."

It has been ascertained that the State Board of Equalization is still in session at this date and will not complete its work until December 31, 1945, for the assessment made in 1944. In view of that fact, and applying the rule in the above decisions, using "the time when the particular bonds are voted," as suggested in the last decision above, which was June 19, 1945, the bond issue must not represent an indebtedness exceeding five per cent of the value of the taxable property in the school district referred to, based on the assessment of June 1, 1942.

As to your question as to whether intangible property may be included in determining the value of the property in the district, we believe Section 10331 to be plainly in conflict with Section 26(b) of Article VI of the Constitution of 1945, which is as follows:

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"Any county, city, incorporated town or village, school district or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per centum of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

In the event of conflict between existing laws and the Constitution of 1945, Section 2 of the Schedule declares that such inconsistent laws remain effective. The pertinent part of Section 2 of the Schedule is as follows:

"* * * All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Unless sooner repealed or amended by the Legislature, Sections 10328 to 10331, inclusive, R. S. Mo. 1939, will remain in effect until July 1, 1946.

CONCLUSION

It is, therefore, our conclusion that bonds issued by a common school district in pursuance to an election held in 1945, and prior to the completion of equalization and revision of the 1944 assessment by the State Board of Equalization, representing an indebtedness not in excess of five per cent of the value of the taxable property, including intangible property, in the issuing district, based on the assessment of June 1, 1942, are valid, if they comply with the law in all other respects.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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