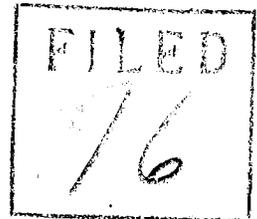


SCHOOLS: Under Section 10358, Senate Bill No. 208, passed by  
TAX LEVY: the 63rd General Assembly, a school district board  
of education may submit a proposal to the voters of  
said district for a subsequent increase in the tax  
levy for the same year or years that an increase has  
already been voted in excess of the amount authorized  
by the Constitution without voter approval.

March 20, 1947



3/27

Mr. Hubert Wheeler, Commissioner  
Division of Public Schools  
Department of Education  
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter dated February 5, 1947,  
which reads in part as follows:

"This Department has received inquiries from  
Boards of Education concerning the laws of  
this state, authorizing school districts to  
increase tax rates in excess of the amount  
authorized by the Constitution that boards  
may levy without voter approval. Specifically,  
Boards of Education desire to know the procedure  
for increasing tax levies beyond the rate pre-  
viously authorized by the voters of the district.  
Section 10358, S.B. 208, Laws of 1946, makes pro-  
vision for increasing the tax rates for school  
purposes. Last year several of the school dis-  
tricts in this state increased the tax rates  
according to the provision of this law, but  
find it necessary because of increased school  
cost to authorize an additional increase in the  
tax levies for the ensuing years.

"Section 10358, applicable to all school dis-  
tricts, does not specifically indicate a pro-  
cedure for authorizing a further increase of  
tax levies; however, other laws applicable to  
certain cities or counties make specific pro-  
visions for authorizing further increases of  
taxes, which seem to indicate the proper pro-  
cedure for any school district to follow for  
increasing tax levies.

\* \* \* \* \*

"We will appreciate your advice and official  
opinion in regard to the following question:

"Does the Board of Education have the general power for submitting the proposition for increasing the tax rate, in addition to the rate previously authorized by vote of the school district?"

"In other words, in what way is it possible for a district to increase a tax rate which has already been increased for a period of time, for example four (4) years, by a previous vote?"

The question to be determined specifically is: Under Section 10358, Senate Bill No. 208, passed by the 63rd General Assembly, may a school district board of education submit a proposal to the voters of said district for a subsequent increase in the tax levy for the same year or years that an increase has already been voted in excess of the amount authorized by the Constitution without voter approval. Said constitutional provision is found in Section 11(b), Article X, of the 1945 Constitution, and provides in part:

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

\* \* \* \* \*

"For school districts formed of cities and towns--one dollar on the hundred dollars assessed valuation, except that in the City of St. Louis the annual rate shall not exceed eighty-nine cents on the hundred dollars assessed valuation;

"For all other school districts--sixty-five cents on the hundred dollars assessed valuation."

Section 11(c), Article X, of the 1945 Constitution, provides in part:

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when

the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law;  
 \* \* \* \* \*

Section 10358 of Senate Bill No. 208 provides:

"Whenever it shall become necessary, in the judgement of the board of directors or board of education of any school district in this state, to increase the annual rate of taxation, authorized by the constitution for district purposes without voter approval, or when a number of the qualified voters of the district equal to ten per cent or more of the number casting their votes for the directors of the School Board at the last school election in said district shall petition the board, in writing, for an increase of said rate, such board shall determine the rate of taxation necessary to be levied in excess of said authorized rate, and the purpose or purposes for which such increase is required, specifying separately the rate of increase required for each purpose, and the number of years, not in excess of four, for which each proposed excess rate is to be effective, and shall submit to the qualified voters of the district, at the annual school meeting or election, or at a special meeting or election called and held for that purpose, at the usual place or places of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board, due notice having been given as required by Section 10418; and if two-thirds of the qualified voters voting thereon shall favor the proposed increase for any purpose, the result of such vote, including the rate of taxation so voted in such district for each purpose, and the number of years said rate is to be

effective, 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 receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all 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."

The wording of said Section 10358 does not specifically make the provision that the subsequent proposal for a further increase in the tax levy may be made. It says that, whenever it shall become necessary, in the judgment of the board, to increase the annual rate of taxation, or when ten per cent or more of the qualified voters of the district shall petition the board, in writing, for an increase of said rate, such board shall determine the rate of taxation necessary to be levied in excess of said authorized rate, and shall submit to the qualified voters of the district whether the rate of taxation shall be increased as proposed by said board. That wording would seem to indicate that the district is not precluded from subsequently increasing the rate, in addition to the rate previously authorized by the board of the school district.

In addition to the wording of Section 10358, we are aided by Section 10688, Senate Bill No. 294 and Section 10586, Senate Bill No. 315, both of which bills were passed by the 63rd General Assembly. Whereas the sections of Senate Bill No. 208 are applicable to all classes of schools, Senate Bill No. 294 relates to increase of tax levy for school purposes and the period of the increase and the method of voting therefor in school districts in cities of over 75,000 and less than 500,000 inhabitants. Section 10688 of said Bill No. 294 is the section analogous to Section 10358 of Senate Bill No. 208, except that Section 10688, in addition to providing for the proposed increase to be submitted to the voters of the district, says: "\* \* \* The acceptance of a proposal to increase the tax levy for any year or years shall not prevent the board from subsequently proposing a further increase in the tax levy for the same year or years.\* \* \*" Section 10586 of Senate Bill No. 315 provides:

"In all counties of the first class, the qualified voters in any first class high school district may, at any annual meeting provided by law, vote a rate of taxation for school purposes in accordance with the provisions of the constitution of this state, and said rate of taxation for school purposes thus voted shall be authorized and established for the next ensuing four years, unless within said period such rate is changed in like manner, provided that such rate may be decreased by the board of education, without calling an election. \* \* \* \* "

(Underscoring ours.)

Thus, from a reading of these two latter bills, we find a specific reference to the fact that a subsequent proposal to further increase the tax levy may be had in the same year or years. These are provisions analogous to Section 10358 of Senate Bill No. 208, which is applicable to all classes of schools, but which does not specifically indicate a procedure for authorizing a further increase of tax levies. However, other laws similar to Section 10358 but applicable to certain cities or counties make specific provisions for authorizing further increases of taxes, which would seem to indicate the proper procedure for any school district to follow for increasing tax levies. As was stated by the court in *The State v. Summers*, 142 Mo. 586, at l.c. 596:

"\* \* \* Even cognate statutes, though not strictly in pari materia, may be invoked and referred to in order to elucidate the legislative intent. \* \* \* \* \*"

In the case of *State ex rel. Buchanan County v. Fulks*, 296 Mo. 614, the court said at l.c. 626:

"\* \* \*(36 Cyc. 1149.) Again, on page 1151:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them,

the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' (See Lazonby v. Smithey, 151 Mo. App. 285, 289 and cases cited in State ex rel. Lashley v. Becker, 290 Mo. 1.c. 620.)"

Said Section 10358 says that, whenever it shall become necessary in the judgment of the board, or when a certain number of the qualified voters of the district shall petition the board, the proposal of the increase in excess of the rate authorized by the Constitution shall be submitted to the voters. It is quite probable that conditions might arise after the levy has been once increased which would make it apparent that the tax rate voted by such increased levy would be insufficient to produce enough revenue to maintain the schools, and the Legislature has made provisions to meet such a situation. Reading Senate Bill No. 208, in light of the provisions of Senate Bill No. 294 and Senate Bill No. 315, we are lead to the conclusion that we are permitted to interpret the word "whenever" in Section 10358 as meaning that the voters are permitted to subsequently vote on the proposal to further increase the tax levy for the same year or years, and such proposal may be made to the qualified voters of the district by the board.

#### CONCLUSION

It is, therefore, the opinion of this department that under Section 10358, Senate Bill No. 208, a school district board of education may submit a proposal to voters of said district for a subsequent increase in the tax levy for the same year or years that an increase has already been voted in excess of the amount authorized by the Constitution, without voter approval.

Respectfully submitted,

Wm. C. COCKRILL  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

WCC:LR