

SCHOOL DISTRICTS: Last date for certification of levy
TAXATION: increase vote.

July 16, 1953

Opinion No. 97

Honorable Homer F. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri



Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The county clerk of our county would like information in the following manner:

"One of the consolidated School districts have been trying to vote a special levy for school purposes and have already voted on it three times since April, each time it has been defeated, they are now getting ready to vote on it on the 9th day of July, and the question he is interested in is just how late they can vote and force him to put the levy on the taxes due and payable this year. He says that ordinarily these estimates are given him in June, in order for him to get them in the tax books for the current year, and so he would like to know what date is the latest that they can vote and give him the estimates through the Board thereafter, or at that time, and make him put them on this years taxes."

In this opinion we have assumed that the "special levy" referred to in your letter of inquiry is the increased levy authorized under the Constitution and which may be voted under the provisions of Section 165.080, Laws of Mo., 1951, p. 469. This statute, insofar as it relates to the duties of the county clerk, reads as follows:

Honorable Homer F. Williams

" * * * 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." (Emphasis ours.)

The duties enjoined upon the county clerk after receipt of the certified additional levy are outlined by Section 165.083, RSMo 1949, which reads in part as follows:

"Upon receipt of the estimates of the various districts, the county clerk shall proceed to assess the amount so returned on all taxable property, real and personal, in each district, as shown by the last annual assessment for state and county purposes, including all statements of merchants in each district of the amount of goods, wares and merchandise owned by them and taxable for state and county purposes;
* * *" (Emphasis ours.)

In order to determine the last possible date upon which such certification and extension of taxes may be made, it is necessary to refer to the general statutes relating to the preparation of the tax books and the extension of levies thereof. This is made necessary by reason of the incorporation in each of the statutes quoted of the phrase "last annual assessment for state and county purposes" which discloses that the levies are to be extended only upon the assessment lists embraced in the then current tax rolls.

Honorable Homer F. Williams

In this regard we direct your attention to Section 137.290, RSMo 1949, relating to the preparation and final correction of the assessment lists in which said section reads as follows:

"The assessor's book shall be corrected and adjusted not later than September first of each year. The clerk of the county court in each county, upon receipt of the certificates of the rates levied by the county court, school districts and other political subdivisions authorized by law to make levies or required by law to certify levies to the county court or clerk of the county court, shall then extend the taxes in the assessor's book, in proper columns prepared for such extensions, according to the rates levied; and shall on or before the thirty-first day of October of each year deliver the tax book with the rates extended therein to the collector. The assessor's book, with the taxes so extended therein, shall be authenticated by the seal of the court as the tax book for the use of the collector; and when the assessor's book is in two or more volumes, such extension shall be made in all such volumes, and each volume shall be authenticated by the clerk with the seal of the court. And upon a failure to make out such extension of taxes in the assessor's book or books, as the case may be, and deliver same to the collector not later than October thirty-first, the county court shall deduct twenty per cent from the amount of fees which may be due the clerk for making such extension, and such assessor's book, with the taxes so extended therein, shall be called the 'tax book.'"

You will note that under the provisions of this section no specific time has been set out within which the county clerk must commence the extension of the tax levies against the various properties against which taxes are to be levied. However, you will also note that on or before the thirty-first day of October of each year such books are to be

Honorable Homer F. Williams

delivered to the Collector of Revenue for the use of such officer in the collection of taxes.

A fair construction of the statute then, it seems to us, is that if the certification is made to the county clerk prior to his having extended the levies against the property of the persons resident within the school district voting the increased levy and sufficient time remains within that limited by the statute during which the county clerk can make the extension, then it is the duty of the county clerk to do so. On the other hand, if insufficient time in fact does not remain, or if the prior extension of levies has been made, then we do not think that the county clerk can be held negligent in the discharge of the duties of his office in failing to extend the duly certified levies. In other words, the problem is one of a practical application of the mechanics involved in the actual computation of the taxes and the extension thereof upon the tax books related to the time within which such tax books are to be finally completed.

CONCLUSION

In the premises, we are of the opinion that it is the duty of the county clerk to extend upon the tax rolls all levies which are certified to such officer prior to the time that such officer has actually entered upon the discharge of his duties as provided by Section 137.290, RSMo 1949. In other words, it is purely a question of the reasonableness of the time remaining prior to the thirty-first day of October of the current year, so that if such reasonable length of time, in fact, remains, then the county clerk should extend the taxes as certified.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB:sw