

COUNTY CLERK:
TAXATION:

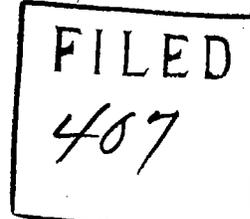
It is the ministerial duty of a county clerk to extend taxes in the tax books based upon the tax rates certified to him by the school boards of the various school districts and he has no

power to question the tax rates certified to him by such school boards or to refuse to extend the taxes because he determines that the school boards have allegedly certified to him tax rates not authorized by law.

OPINION NO. 407

September 18, 1969

Honorable Clyde Rogers
Prosecuting Attorney
Ozark County Court House
Gainesville, Missouri 65655



Dear Mr. Rogers:

This is in answer to your letter of recent date in which you request an opinion as to the power of the county clerk to refuse to extend the taxes based upon the tax rates certified to him by the Boards of Directors of school districts if the county clerk is of the opinion that the Boards have certified illegal and unlawful rates and to extend the taxes at what the clerk believes to be lawful and correct tax rates.

Your request is occasioned by the fact that the assessed valuation of real and personal property in Ozark County was increased more than 25% for the year 1969 over the assessed valuation for the year 1968 due to an order of the state tax commission.

Section 137.073 RSMo is applicable when such an increase in assessed valuation occurs. Such section provides as follows:

"Readjustment of prior levy when county assessment increased ten per cent.-- Whenever the assessed valuation of real or personal property within the county has been increased by ten per cent or more over the prior year's valuation, either by an order of the state tax commission or by other action, and such increase is made after the rate of levy has been determined and levied by the county court, city council, school board, township board or other bodies legally authorized to make levies, and certified to the county clerk, then such taxing authorities shall immediately revise and lower the rates of levy

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to the extent necessary to produce from all taxable property substantially the same amount of taxes as previously estimated to be produced by the original levy, plus such additional amounts as may be necessary approximately to offset said district's reduction in the apportionment of state school moneys due to its increased valuation. The lower rate of levy shall then be recertified to the county clerk and extended upon the tax books for the current year. The term 'rate of levy' as used herein shall include not only those rates the taxing authorities shall be authorized to levy without a vote, but also those rates which have been or may be authorized by elections for additional or special purposes. No levy for public schools or libraries shall be reduced below a point that would entitle them to participate in state funds."

Under such section, the duty is placed upon the various school boards in a county in which the assessed valuation of real or personal property is increased more than 10% over the last years assessment to make such adjustment in the rates of levy as to produce substantially the same amount of taxes as previously estimated to be produced by the original levy plus such additional amounts necessary approximately to offset the district's reduction in apportionment of state school moneys.

This is a duty placed upon the school boards. There is no duty placed upon nor authority given to a county clerk to refuse to carry out the duty placed upon such clerk to extend the taxes according to the rates certified to him by the various school district boards under provisions of section 137.290 RSMo. Such section provides in part as follows:

"* * *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 the extensions, according to the rates levied.* * *"

In the case of State ex rel. School District vs. Byers, 67 Mo. 706 the Supreme Court held that the actions of the county clerk in extending taxes are purely ministerial. The court said, l.c. 710-711.

"* * *The extension of the assessment upon the school taxbook is a ministerial, and not

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a judicial, act, and it was the duty of the clerk of the county court of Jasper county, on the receipt of the estimates made by the local directors from the proper officer, to proceed to assess the amount so returned and place it upon a separate tax-book, to be known as the school tax-book; and a mandamus could have been resorted to compel him to discharge that duty.

* * *

The statute imperatively requires him to perform it. If in a given case it be improper to make such extension and assessment, the tax-payers have a remedy to prevent it by proceeding in the circuit court.* * *"

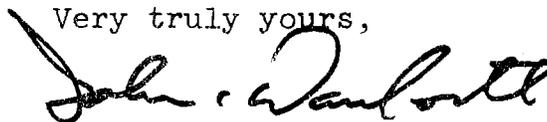
Since the duty of the county clerk in extending the taxes under section 137.290 is purely ministerial such clerk has no power or authority to determine whether the members of a school board have complied with the statutes applicable to the determination of the tax rate for such school district. The duty of the clerk is to extend in his capacity as a ministerial officer the taxes based upon the assessment of the property and the tax rate as certified to him by the bodies which have the duty, power and authority to determine tax rates. He is without authority to question the tax rates certified to him by the school boards. He does not have any power or authority to refuse to extend the taxes because he believes that the school boards have made illegal levies.

CONCLUSION

It is the opinion of this office that it is the ministerial duty of a county clerk to extend taxes in the tax books based upon the tax rates certified to him by the school boards of the various school districts and that he has no power to question the tax rates certified to him by such school boards or to refuse to extend the taxes because he believes that the school boards have certified to him tax rates not authorized by laws.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Very truly yours,



JOHN C. DANFORTH
Attorney General