

SCHOOLS: Where there has been a failure to extend on the regular tax book for the use of the county collector a school
TAXATION: tax levy legally authorized the county clerk must prepare a supplemental tax book with said tax extended thereon so that the same may be collected.



November 27, 1951

12-3-51

Honorable R. M. Gifford
Prosecuting Attorney
Sullivan County
Milan, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department which in part reads:

"Reorganized District No. 3 consisting of territory in the four above named counties was set up by virtue of the provisions of section 165.657 and subsequent sections of the Revised Statutes of Mo. 1949. This district is located such that it includes territory in each of the four separate counties above named and at an election held earlier this year a \$1.00 building levy was approved by a majority vote of those voting at such election. There is no question as to the proceedings with reference to the calling or the conduct of that election but due to the fact that it was approved by the voters rather late in the year it seems that notice thereof was not passed on to the proper authorities in Mercer county so that at this time such additional tax has not been extended on the county books and as a result thereof those members of District No. 3 living in Mercer County will not pay the additional tax yet those residing in Sullivan, Grundy and Putnam Counties will find such additional tax extended and placed upon their tax assessment.

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"An opinion of your office is sought as to whether or not such tax may be collected against those persons residing within Sullivan County, Missouri, in view of the fact that residents of Mercer County who will receive the identical benefits of said district will not pay such tax. * * *"

As we understand the facts presented in your request, a particular reorganized school district with territory extending into four different counties sometime during this year voted a school tax levy. The election wherein the tax levy was voted was properly conducted, the levy was approved by a majority vote of those voting in the election and it is our understanding that the levy in question was in every respect properly authorized.

It is our further understanding that the tax levy voted by the school district has been duly extended on the tax books by the county clerk in the counties of Sullivan, Putnam and Grundy, but that said tax levy has not been extended on the tax book in Mercer county by the county clerk.

Therefore, the basic question presented is what procedure should be followed in view of the state of affairs above outlined.

Section 165.080, RSMo 1949, provides for the manner of increasing the rate of taxation within a school district and in part reads:

"* * *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."

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Under the above section when a school tax levy has been voted certification must be made by the clerk or secretary of the school district to the county clerk of the proper county who shall upon receipt thereof proceed to assess said tax and extend it on the tax books. Regarding the time when this is normally done, Section 137.290, RSMo 1949, provides 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.'"

While under the above section taxes are normally extended on the tax book by the county clerk prior to October 31, it is conceivable that a school tax levy authorized by an election held late in the year may not be certified to the county clerk in time for him to extend said tax levy on the tax book prior to the delivery of the tax book to the county collector.

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Regardless of the time when certificate of the tax levy voted by the school district may have been given to the various county clerks, we are confronted with the situation where a tax levy has been legally voted by a school district but the same has not been extended on the tax book of one of the proper counties involved, to-wit, Mercer county. We believe that Section 137.300, RSMo 1949, provides for the procedure to be followed when such a situation exists. Said section in part reads:

"When for any cause there has been a failure to levy the state, county, school or other taxes, or any portion thereof, or to extend and authenticate the same for the use of the collector, or to make out and deliver to the collector a proper tax book for the collection of the same, as required by law, in any county for any year or years, the clerk of the county court of such county for the time being, when so required for such state taxes by the state tax commission, and for such county, school or other taxes by the county court, shall make a supplemental tax book for such year or years. Such supplemental tax book shall be made upon the assessments for the year or years for which the taxes should have been levied, or where there has been a failure to assess the property, upon the assessment made as required by section 137.295, the taxes for each year to be in a separate book and to be levied for such state, county, school and other taxes, or portions of the same, as had failed to be levied and collected at the proper time. * * *"

In view of the provisions of the above statute, the residents of Mercer County will be liable for payment of the tax voted by the school district inasmuch as the county clerk of that county would be required to prepare a supplemental tax book for the use of the county collector upon which the tax levy voted by the school district would be properly extended and subsequently collected.

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In the case of State ex rel. Thompson, v. Jones, 41 S.W. (2d) 393, the state auditor and others instituted a proceeding in mandamus against the county clerk of Morgan county to compel the clerk to compute and extend taxes for the particular year which had been omitted. The clerk had delivered the tax books to the county collector without computing and extending said taxes. In ruling on the question, the court at l.c. 399-400, said:

"However, respondent's wrongful act in delivering the tax books to the collector without computing and extending the taxes on the assessment here in question will not deprive relators of the relief sought in this proceeding. The prayer of relators' petition is that the court 'grant its writ of mandamus directed to the respondent, commanding and requiring him as Clerk of the County Court of Morgan County, Missouri, to compute and extend the taxes levied by lawful authority in Morgan County, Missouri, and by the State of Missouri, for the year 1930 against said property of said corporation upon the valuation thereof as found, fixed and assessed by said agent of the State Tax Commission and approved by said State Tax Commission and by the State Board of Equalization of the State of Missouri, and for such other orders, judgments and decrees in the premises as may be just and proper.'

"Section 9878, Rev. St. 1929, thus provides for the making of a supplemental tax book: 'When for any cause there has been a failure to levy the state, county, school or other taxes, or any portion thereof, or to extend and authenticate the same for the use of the collector, or to make out and deliver to the collector a proper tax book for the collection of the same, as required by law, in any county for any year or years, the clerk of the county court of such county for the time being, when so required for such State taxes by the state auditor, and for such county, school or other taxes by the county court, shall make a supplemental tax book for such year or years. * * *'

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"Section 9856, Rev. St. 1929, empowers the state tax commission as follows: '* * * The state tax commission is hereby given any power statutory law confers on revenue officers necessary to make effective and complete the assessment and collection of the revenue, and may do any and all things necessary in compliance with existing statutes to perfect, complete and make effective the assessment and collection of the revenue.'

"In the situation disclosed by respondent's return, we may treat the commencement of this suit as a request on the part of the state tax commission, in the exercise of the power thus conferred upon it, for respondent to make out and deliver to the county collector such supplemental tax book showing computation and extension of taxes as above prayed."

The above case was affirmed in the companion case of State ex rel. Thompson v. Collier, 41 S.W. (2d) 400, where at l.c. 402 the court said:

"* * *The action of the state tax commission became final when approved by the state board of equalization (section 9855, Rev. St. 1929), and if said county clerk had not extended the taxes before receiving the certified copy of the order of the state board of equalization, it would not only have been his unqualified duty to have done so thereafter but if he had delivered the tax books to the county collector without having done so he could have been compelled to make out and deliver to the county collector a supplemental tax book showing the proper extension. Sections 9878 and 9856, R. S. 1929, and State ex rel. L. D. Thompson v. Jones, supra."

In view of the foregoing statutory provisions and authorities, it would follow that all of the residents within the school district in question will ultimately be required to pay the school tax levy legally authorized by vote of the people within the school district.

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CONCLUSION

It is therefore the opinion of this department that when for any cause there has been a failure to extend on the tax book for the use of the county collector, a school tax levy legally authorized it is the duty of the county clerk to prepare a supplemental tax book with said tax properly extended thereon for use of the county collector in collecting said tax.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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