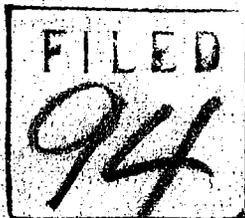


ELECTIONS:  
SCHOOL DISTRICTS:  
TAX LEVY INCREASE:

Before there can be a valid election to increase the school district tax levy there must be sufficient notice of such election and purposes. For purpose of increasing school term from 8 to 9 months, there need not be notice of such election.



May 15, 1958.

Honorable Richard M. Webster  
Assistant Prosecuting Attorney  
Jasper County  
Carthage, Missouri

Dear Mr. Webster:

This is in answer to your letter of April 17, 1958, in which you request an opinion from this office as follows:

"You will find attached hereunto a notice of an annual school meeting of the Erie School District of Jasper County, Missouri, and the minutes of the meeting.

"You will note that in the notice of the meeting there were two specific items of business referred to:  
1. To vote a sufficient levy. 2. To elect one board member for a three year term.

"You will further note that on the notice of annual meeting it was specifically stated that the amount required to meet the budget was \$1.90.

"The school district has for many years been on an eight month basis.

"The meeting was attended by four people. The Clerk of the district was not able to be present, and the minutes were kept by an acting Clerk. By a vote of 3 to 1 a levy of \$2.20 was approved and by a similar vote the term of the school year was increased from 8 to 9 months.

"A question has been raised as to whether or not the election was valid for reason that the notice specifically stated that the levy required was \$1.90, but that a levy of \$2.20 was submitted, and for the further reason that no notice was given as to a change of the school term from 8 to 9 months.

"Please advise as to whether the election was a valid one, and second as to whether the tax may be assessed if there is no contest of the election."

Honorable Richard M. Webster

We first choose to discuss the matter of the voting of the levy of \$2.20. We are enclosing an opinion dated April 1, 1948, which expresses the law with respect to the necessity of notice required by Sections 165.080 and 165.200, RSMo., when there is to be an election pertaining to the increase of the school district levy. It is to be observed that Section 165.080, RSMo., Cumulative Supplement 1957, creates a situation in which notice is to be given in accordance with Section 165.200 when there is to be an increase in the tax levy. We feel that this previous opinion sufficiently establishes the law and the policy which is to be followed in this instance.

With respect to the notice of the meeting your letter and enclosure make it clear that notice was given, to the effect that there would be an election for the purpose of increasing the school levy. However, it is our belief that such notice was not sufficient to be deemed compliance with Sections 165.080 and 165.200, and because of such insufficiency of this notice that part of the election is void.

In concluding that this notice is insufficient we look to the basis for any notice of elections with regard to tax increases, and it would seem obvious that such notice is to provide the voters with knowledge of the subject of the election so they may educate themselves as to its desirability. In the case of Peter v. Kaufmann, 38 S.W.2d 1065, the court states:

"It is these notices which the voters see and consult in order to determine what propositions are to be voted on and decided at the annual meeting, and, if the notices impart intelligent information as to this, that is all that is required."

It is our belief that notice of an election to increase the tax levy in accordance with Section 165.080, in order to impart intelligent information, must state the exact amount that is to be voted upon, and the purposes for which the specific sums are to be levied.

We call your attention to the case of State ex rel. School District of Affton v. Smith, 80 S.W.2d 858, in which the proposition voted on was consolidation of school districts. As is pointed out in a previous opinion, the court held that where the statutes require notice any action taken by the voters without notice, or with an insufficient notice, is void. Therefore, we feel that although there was notice to vote an increase in the tax levy of the Erie School District there was not a sufficient notice to authorize the increase to \$2.20. The notice that has been submitted to this office shows the levy required to raise local taxes to be \$1.90. Inasmuch, then, as there was insufficient notice the Smith case is applicable and this portion of the

Honorable Richard M. Webster

election is void.

You raised by your letter the question whether this election would be void or voidable, and it is our belief, as expressed in the enclosed opinion of May 22, 1956, that the election is void rather than voidable. In this 1956 opinion substantially the same question was involved as you present. This opinion, citing cases, determined that:

"No notice having been given as required for the increase in the teachers' fund which, in fact, was voted, said levy is invalid. This must be resubmitted."

However, it must be observed from this opinion that only the part of the election which was not in compliance with mandatory provisions of the law will be void. You will see that in the absence of a special provision such as Section 165.080, Section 165.203 lists the powers with which qualified voters are possessed when assembled at the annual meeting. You will also see that paragraph 4 of Section 165.203, RSMo 1949, is authority for determining by ballot the length of school term in excess of eight months for the ensuing school year. We also call your attention to the fact that when read alone the first sentence of Section 165.200, RSMo 1949, is the only sentence in that section pertaining to annual meetings. Therefore, unless another section is applicable there need be no notice of the purposes of, or the subjects to be taken up during, the annual meeting, other than that provided by these two sections of the statute. Therefore, we feel that that portion of the election which increased the Erie School District's school year from eight to nine months was not invalid and is not subject to challenge even though no notice was provided with respect to that school year increase.

#### CONCLUSION

It is the opinion of this office that that part of the election conducted by the Erie School District of Jasper County, Missouri, on the 1st day of April, 1958, for the purpose of increasing the school tax levy is invalid and void because of insufficiency of notice.

With respect to that part of the election upon which an increase of the school term from eight to nine months was voted, there was notice in compliance with the law, and this will be upheld.

Very truly yours,

John M. Dalton  
Attorney General

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