



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-820

**SCHOOLS AND SCHOOL DISTRICTS:
Tax For Fire Prevention and
Safety Purposes**

Honorable David DeDoncker
State's Attorney
Rock Island County
Courthouse
Rock Island, Illinois 61201

Dear Mr. DeDoncker:

I have your letter in which you raise several questions concerning the school tax for fire prevention and safety purposes, authorized by section 17-2.11 of the School Code. Ill. Rev. Stat. 1973, ch. 122, par. 17-2.11.

In your first question you ask whether all of the following documents must be on file with the county clerk before a tax provided for in section 17-2.11 may be extended: (1) a certified copy of a lawful order of an

Honorable David DeDoncker - 2.

agency having authority to enforce any law or regulation designed for safety and protection of school children from fire; (2) a certified copy of the resolution of a school district levying the tax; (3) a certified estimate made by a licensed architect or engineer stating the amount required to comply with the order; (4) a certificate of the Superintendent of Public Instruction approving the estimate; (5) a certificate of the superintendent of the educational service region approving the estimate.

Section 17-2.11 provides in pertinent part:

"§ 17-2.11. Whenever, as a result of any lawful order of any agency, other than a school board, having authority to enforce any law or regulation designed for the safety of school children from fire, or any law or regulation for the protection and safety of the environment, pursuant to the 'Environmental Protection Act', any school district having a population of less than 500,000 inhabitants is required to alter or reconstruct any school building and or equipment, such district may, by proper resolution, levy a tax for the purpose of making such alteration or reconstruction, or survey by a licensed architect or engineer, upon all the taxable property of the district at the value as assessed by the Department of Local Government Affairs at a rate not to exceed .05% per year for a period sufficient to finance such alterations or reconstruction, upon the following conditions:

(a) When there are not sufficient funds available in the building fund of the district to make such alterations or reconstruction so ordered.

(b) When a certified estimate of a licensed architect or engineer stating the estimated amount

Honorable David DeDoncker - 3.

necessary to make the alterations or repairs so ordered has been secured by the district, and the estimate has been approved by the superintendent of an educational service region, having jurisdiction of the district, and the Superintendent of Public Instruction.

The filing of a certified copy of the resolution levying the tax when accompanied by a certified copy of the order requiring the alterations or reconstruction, the architect's or engineer's estimate, and the certificates of the superintendent of an educational service region and the Superintendent of Public Instruction shall be the authority of the county clerk to extend such tax; provided, however, that in no event shall the extension for the current and preceding years if any, under this Section be greater than the estimate of the cost of such alterations or reconstruction required to be made, and in event such current extension and preceding extensions exceed such estimate, it shall be reduced proportionately.

* * *

Such tax shall be levied and collected in like manner as all other taxes of school districts. * * *

The duties which the county clerk is required to perform in the extension of taxes, including school taxes, are not legislative or judicial, but are purely ministerial in character. (People ex rel. Smith v. National Plate Glass Co., 344 Ill. 340; People ex rel. Carr v. Pittsburg, Cinc., Chicago, and St. Louis Ry. Co., 316 Ill. 410.) He has no

Honorable David DeDoncker - 4.

authority to levy taxes nor to determine whether the taxes have been legally assessed. (People ex rel. Chamberlain v. Chicago B. & Q. Ry. Co., 383 Ill. 212.) It should also be noted that a certified copy of the resolution levying the tax is evidence of a tax levy but it is not the levy itself. (People ex rel. Williamson v. Cox, 301 Ill. 130.) Section 17-2.11 clearly states that the filing of a copy of the resolution, the order, the estimate, and the two certificates of approval "shall be the authority of the county clerk to extend such tax".

In People ex rel. Chamberlain, supra, a school district, situated in both Rock Island and Whiteside Counties, filed a proper certificate of levy with the county clerk of Rock Island County, but did not file a certificate with the county clerk of Whiteside County. Section 191 of the School Law, a predecessor of section 17-12 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 17-12), provided that where a school district was situated in two or more counties, a certificate setting forth the amount of the tax to be levied

Honorable David DeDoncker - 5.

had to be filed with the county clerk of each county in which the district was situated.

In sustaining an objection to the tax, the court held that "the purpose of requiring a certificate to be filed with the county clerk is to give that officer information necessary to the extension of a proper tax. It is his power to act * * * and without such certificate he has no authority to extend the tax". At page 216.

Orwig v. Conley, 322 Ill. 286, involved an objection to a tax levy where there had been a detachment of a common school district from a community consolidated district. Under then section 59 of the School Law, where territory has been set off from a school district which had a bonded debt, and the detachment was not the result of a petition by a majority of the voters of the district, such district would remain liable for payment of the bonded debt, as if it had not been divided. The directors of the original district, and the directors of the detached territory were required to act as a joint board for the purpose of determining and certifying to the county clerk the amount of tax required to pay the bonded debt. Although the

Honorable David DeDoncker - 6.

provisions of section 59 applied, there had been no certificate of the joint board filed with the county clerk. Only the certificate of the original district had been filed.

In holding that the clerk could not extend the tax, the court stated at page 290:

"* * * The manner of assessing and collecting the tax is, however, regulated by statute, and must be done by the officers appointed by the law for that purpose and in the manner provided by law. The county clerk can only extend the tax against the owner of property upon the evidence which the law authorizes him to act upon. The evidence authorized in this case is the certificate of the joint board, consisting of the board of education of district No. 10 and the directors of the district detached. Unless this certificate was presented to him the county clerk had no authority to extend the tax. If the joint board should refuse to meet and determine and certify the amount of tax required its members may be required by mandamus to do so, but the county clerk cannot be required to extend the tax until they do make the certificate and is without authority to do so. People v. Elliott, 320 Ill. 152."

Under the clear import of section 17-2.11, the county clerk is authorized and empowered to extend the tax only when he receives all five documents set out in the statute. It is, therefore, my opinion that until he receives

Honorable David DeDoncker - 7.

on file all five documents, he is without authority to extend a tax for fire prevention and safety purposes.

With regard to your second question, you state:

"My second question pertains to the situation wherein a school district apparently has provided the necessary documentation with respect to the first levy. Must the school district continue to file all required documents until the total amount necessary to be raised has been levied, or would a certified copy of the resolution levying the tax be sufficient for subsequent years, as long as the levy did not exceed the amount of the original estimate?"

An act of the legislature should not be construed to result in absurd, inconvenient or unjust consequences.

(Reynolds v. The City of Tuscola, 48 Ill. 2d 339.) Rather, a practical and common sense construction, and one which permits a reasonable operation of the statute should be given. Carrigan v. Illinois Liquor Control Comm., 19 Ill. App. 2d 275; People ex rel. Bd. of Ed. of Pembroke Community Consol. School Dist. No. 259 v. Davis, 13 Ill. App. 2d 419.

It is my opinion that once the estimate, the certificates of approval, and the order have been received on file by the county clerk, it would not be necessary to file

Honorable David DeDoncker - 8.

those same documents each year with the annual certified copy of the resolution levying the tax.

With regard to your third question, you state:

"My third question involves a situation wherein a school district apparently complied with the statutory requirements several years ago. Subsequent thereto, it apparently became necessary to make additional alterations and modifications to the district's buildings, in order to bring them into compliance with the rules and regulations promulgated by the Superintendent of Public Instruction. The school district adopted a resolution, levying an additional tax to pay for such alterations and modifications. A copy thereof was filed with the county clerk. Accompanying it was the certificate of approval from the Superintendent of Public Instruction. This certificate states that the cost estimate has been received and approved by the Superintendent of Public Instruction. No copy of the cost estimate was filed with the county clerk. Also, no copy of any order requiring the additional structural modifications was filed with the county clerk. In a situation wherein the school district is required to make structural modifications above and beyond those essentially required, thereby requiring a revised cost estimate, must copies of the supplemental order and the revised cost estimate be filed with the county clerk before the tax may be extended?"

As I stated in my answer to your first question, the county clerk cannot extend the tax until he has received on file all the necessary documentation. Furthermore, under

Honorable David DeDoncker - 9.

section 17-2.11, if the current extension and the preceeding extensions exceed the estimate, the levy must be reduced proportionately. If the county clerk has not received a validly certified revised cost estimate, and further, has not received a copy of the order authorizing the additional alteration or reconstruction, he cannot fulfill his statutory duty of determining whether, and to what extent, the current extension exceeds the estimate.

It is, therefore, my opinion that in the event an appropriate agency orders additional alteration or reconstruction, and a revised cost estimate is prepared, those documents, along with the certificates of approval, must be received on file by the clerk before he can be authorized to extend the tax beyond the amount of the original estimate.

Very truly yours,

A T T O R N E Y G E N E R A L