

## Commission Favors School District 17

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the amount of \$42,706.47, petition of authorization for excess was placed before voters at an election, held October 26. At said election voters authorized the levy rate of 219 in favor to 120 in opposition.

third budget is the one under review. The petition questioning the validity of the sets forth several grounds which will be considered

first claim contained in petition is to the effect that election held June 16, 1947, refused to authorize tax in excess of the six per cent limitation to set aside said election was final, in the absence of another vote to set aside election. This presents question of the effect of a vote by the qualified electors to set aside a tax levy in excess of six per cent limitation authorized by the Oregon constitution.

question of the local budget and the public school district of this state discloses no authority upon the authority of a school board of a second-class school district to supplement existing budgets or to prepare a second budget prior to extension of the tax levy upon the assessment and roll. The refusal of the tax levy at one election to authorize a tax levy in excess of the amount required by one budget is not preparation of a second budget or its consideration by voters. Rather, such very action in itself necessitates a re-appraisal and re-appraisal of budgetary requirements of a school district which in turn may require another expression of will of the taxpayers. In this manner, when the State Commission by its opinion August 15, ordered the Curry

County Assessor to deny extension upon the assessment roll to the tax levy required by the second budget of the school district, said district was in effect called upon to prepare a budget and secure the lawful approval of the taxpayers to any excess over the six per cent limitation. There are numerous examples of a school district or other taxing districts preparing a second budget. If such budget be prepared in compliance with the requirements of the law, and, where required, be duly submitted to the lawful electorate for an expression of their will, this commission is aware of no statute invalidating such second budget nor authorizing this commission to do so. This opinion is supported by that of the Attorney General rendered in 1930, in which he declared that a school district may re-consider and set aside its action in voting taxes, and prepare, publish and adopt a new budget at any time before the tax has been entered upon the tax rolls (See Op. A.G. 1928-30, p. 610).

### Claims Faulty Ballots

In their second allegations of illegality, petitioners question the authority of the school board to expend money for a second or third election, and further cites alleged unwise expenditures. This claim has in part already been answered. Further, this commission has no authority to question the discretion and judgment of a school board in the administration of its local affairs. See City of Portland v. Welch, 154 Or. 286, 59 p. (2d) 228.

In their third allegation of illegality, petitioners set forth that the school board failed to include on the ballots a statement of the reasons for increasing the tax levy as required by Section 110-1112 O. C. L. A., and that "persons not qualified to vote were allowed to vote."

Section 110-1112 O. C. L. A., in relevant part declares that:

"The question of increasing any tax levy when submitted to the vote of the people as herein provided, shall be stated on the ballot by including in such ques-

tion the statement of the reasons for increasing such levy made by the tax levying body of the state, county, district or municipality, or by the board, officer or officers upon whose certificate such election is called and held, and the votes of the people shall be given upon the answers yes and no in the usual manner of submitting questions to vote of the people."

The ballot used at the election held on September 26 contained the following language:

"REASON FOR INCREASING TAX LEVY: To provide more adequate facilities for the increased public school population and for increased cost of operation, the amount of tax, in excess of the 6 per cent limitation for said school year is \$32,706.47"

It is to be noted that Section 110-1112 O. C. L. A. is requiring that the ballots contain a statement of the reasons for increasing the levy make no detailed specifications for the contents of such statement. In the opinion of this commission, it cannot be said the statement on the ballots used in the September 26 election is in violation of the requirements of Section 110-1112 O. C. L. A.

In support of the claim that persons not qualified to vote were allowed to vote, petitioners proffered the names of but three such persons, and upon questioning declared that none of such persons had been challenged as to his or her right to cast a ballot.

Section 111-910 O. C. L. A. outlines the qualification of a voter at a school district election:

### Complied With Law

"Any citizen of this state, male or female, who is 21 years of age and has resided in the district 30 days immediately preceding the meeting or election and has property in the district as shown by the last county assessment, and not assessed by the sheriff, or which he or she is liable or subject to pay a tax, shall be entitled to vote at any school meeting or election in said district: provided that the property qualifications imposed by this section shall not apply in the election of the school directors and school clerks; provided further, that any person shall be deemed to have complied with the property qualification imposed by this section who presents to the directors or judges of election satisfactory evidence that he or she has stock, shares or ownership in any corporation, firm, or co-partnership which has property in the district, as shown by the last county assessment, and not assessed by the sheriff, on which such corporation, firm or co-partnership pays a tax, even though his or her individual name does not appear on the tax roll. The chairman of any school meeting or any qualified elector, hereby is authorized to challenge any person who may offer to vote at any such meeting. In case an elector has been challenged or disqualified, it shall be the duty of the chairman of such meeting to administer to each person so challenged touching his place of residence and qualifications as elector at such meeting, and, upon taking which, he shall interrogate him respecting his citizenship in this state, his age, his residence in the district immediately preceding the meeting or election, and whether he has property or shares in a corporation in the district as shown by the last county assessment, and not assessed by the sheriff, on which he or she is liable or subject to pay a tax; and if the meeting be for the election of school directors or clerks, he shall interrogate him as to whether he is a resident and otherwise qualified as an elector."

In compliance with the August 15 opinion and order of this commission, the 1947 assessment roll was used for the purpose of ascertaining the persons having property in the district. As set forth in Section 111-910, a person who offers to vote may be challenged by the chairman of the meeting or any qualified elector. After such challenge the applicant elector has the right to be questioned under oath as to his qualifications, for the absence of the elector's name from the assessment roll is not a complete bar to his right to cast a ballot. Thus, one who can present evidence he has stock, shares or ownership in any corporation, firm or co-partnership, which has property in the district as shown by the last county assessment, is deemed to have complied with the property qualifications. In absence of a challenge therefore, it cannot be said that one who cast a ballot was not qualified.

### District Wants Schools

Note is taken by the commission of the fact that the electorate of the school district has three times been called upon to express its will upon the budget of School District No. 17. At each election, subsequent to that held on June 16, the electorate more clearly expressed its favor of the requested tax levy until at the third election the vote approximated a majority of 2-1.

Having heard representatives of the parties concerned in this matter and considered the evidence presented, this commission finds that the budget and the tax levy for the budget in question were prepared and made in substantial compliance with

the requirements of the local budget law and other laws of this state relating to budgets and tax levies, and it is, therefore,

ORDERED AND DIRECTED that the assessor of Curry County, Oregon, extend upon the assessment roll the tax levy as last made by School District No. 17 of Curry County.

Done at its offices in Salem, Oregon, this 15th day of October, 1947.

STATE TAX COMMISSION,

(State Seal)

Earl Fisher, commissioner and chairman.

Wallace S. Wharton, commissioner.

Carl Chambers, Commissioner and secretary.

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