

SCHOOLS: Teacher, after obtaining judgment for salary, can compel directors of the district to levy special levy to pay judgment, if it is not in excess of the constitutional limit.

November 25, 1940 11/26



Mr. N. Earl Walker, Sup't.
Butterfield Public Schools
Butterfield, Missouri

Dear Sir:

This department is in receipt of your letter of November 20th wherein you make the following inquiry:

"In our circuit court at present there is a case pending in which a former teacher is asking for a judgment against our school district for the amount of some school warrants which were not paid because there were no funds from which they could be paid.

If the plaintiff should obtain the judgment for which he is asking can the court force our school district to run a special levy to pay it? We have no funds which could be used to pay it. May we have your opinion in this matter?"

In the decision of State ex rel. Hufft v. Knight 121 S. W. (2nd) 762, the Springfield Court of Appeals had the identical situation which you present before it. We herewith quote the pertinent part of the decision, l.c. 764:

"It will be noted from the stipulation filed by the parties that all the matters and things alleged in the petition for mandamus are true. The petition alleges that the directors can, under the law, certify the levy of an assessment of 65 cents on the \$100 valuation of the District, under the following statutes and constitutional provisions: Sections 9214, 9226, 9284 and 9261, R. S. Mo. 1929, Mo. St. Ann. Sections 9214, 9226, 9261, 9284, pp. 7086, 7092, 7109, 7143, and Article 10, Sec. 11, Constitution of Missouri, Mo. St. Ann. Const. art. 10, Sec. 11. Therefore we presume that the requirements of these statutes have been met. If the directors can recommend to the county clerk a levy of 65 cents on the \$100 valuation and instead of doing so, merely recommend a levy of 20 cents on the \$100 valuation, which it is conceded is not a sufficient levy to pay the judgment, which the appellant holds against the School District, then mandamus will lie to compel the directors to certify such tax as can be legally levied and apply the surplus, after paying current expenses, to the payment of the judgment held by appellant.

Mandamus is a proper remedy to enforce a judgment against a municipal or public corporation and it has been generally used for such purpose in this state. It is an ancillary proceeding to the main suit and when so employed is not a new suit, but simply process essential to jurisdiction. It is a means of enforcing the collection of a judgment against a municipal corporation and is the legal equivalent of an execution upon a judgment against an individual. State ex rel. Hentschel v. Cook, Mo. App., 201 S. W. 361; State ex rel. Edwards v. Wilcox, Mo. App., 21 S. W. 2d 930. Since an execution may not be run against the property of a school district or other political sub-division of the State (State, to Use of Board of Education, v. Tiedemann, 69 Mo. 306, 33 Am. Rep. 498; City of Edina v. School District, 305 Mo. 452,

267 S. W. 112, 36 A.L.R. 1532; Sec. 1161, R. S. Mo. 1929, Mo. St. Ann. Sec. 1161, p. 1424) the only other procedure available to a judgment creditor to enable him to collect his judgment is for a court of competent jurisdiction to issue its writ of mandamus, requiring the extension of a sufficient levy within the constitutional limits, to provide funds for the payment of the judgment. State ex rel. Hentschel v. Cook, supra; State ex rel. Edwards v. Wilcox, supra.

Mandamus, of course, cannot be employed to control the discretion of one authorized to determine the levy necessary to provide funds necessary for a district. Yet, a school district owes the duty to pay an obligation established by a judgment against it, and its officers are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment. Its duty to do so results from the plain moral as well as the legal obligation of a municipality or district to pay its debts and no discretion within the legal limitation of the performance of the duty can rightfully be claimed or exercised. However, a court cannot by mandamus proceedings compel a municipal sub-division of the state to levy a tax in excess of the maximum fixed by the Constitution. Bushnell et al. v. Drainage District, Mo. App., 111 S. W. 2d 946. The duty of a school district to discharge its obligations, if it can do so by a levy within the limits provided by law, is mandatory upon the district and its directors, and it is mandatory that they certify a levy within the legal limits, sufficient to retire the obligations of the district and mandamus does not interfere with any discretionary powers entrusted to the directors.

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State ex rel. R. E. Funsten Co. v.
Becker et al., Judges of St. Louis
Court of Appeals, 318 Mo. 516, 1
S. W. 2d 103; State ex rel. Kirkwood
School District v. Herpel, Mo. App.,
32 S. W. 2d 96."

Based on the above decision, we are of the opinion
that in the event a school teacher obtains a judgment
for the warrants in question, the school district can
be compelled to extend the levy sufficiently for the
purpose of providing funds for the payment of the judg-
ment. Of course, the amount of the levy must be within
the constitutional limits.

Respectfully submitted

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APPROVED:

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OWN:RT