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SPRINGFIELD

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FILE NO. S-1215

SCHOOLS AND SCHOOL DISTRICTS:
Supplemental Levy Filed
By School Board

Honorable Glen L. Bower
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Court House
P. O. Box 864
Effingham, Illinois 62401

Dear Mr. Bower:

This is in response to your letter regarding the county clerk's duty to extend taxes based upon a supplemental tax levy filed by a school district. You state that the school district in question did in fact file a certificate of levy for the ensuing fiscal year prior to the last Tuesday in September as directed by section 17-11 of The School Code. (Ill. Rev. Stat. 1975, ch. 122, par. 17-11.) This school

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district now seeks to file another certificate of levy with the county clerk due to a determination made by the board of education to increase the amount of its levy. This decision was reached by the board some time after the last Tuesday in September. You ask two questions:

1. Can school districts file supplemental tax levies after the "last Tuesday in September" deadline set forth in chapter 122, section 17-11 of the Illinois Revised Statutes?
2. Can the county clerk validly extend taxes based upon the supplemental levy?

It is my opinion that where a board of education of a school district certifies and files a supplemental tax levy under section 17-11 of The School Code with the county clerk after the last Tuesday in September, and where such supplemental levy is not an amendment to reflect the true acts of the board prior to such date, the supplemental levy is invalid. The county clerk cannot validly extend taxes based upon a void supplementary levy.

Pursuant to section 17-1 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 17-1), the board of education of each school district under 500,000 inhabitants, is directed to adopt an annual budget within or before the first quarter of each fiscal year. If the beginning of the fiscal year of a school district is subsequent to the time that the tax

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levy for the fiscal year is to be made, then such annual budget shall be adopted prior to the time such tax levy shall be made. After determining the budget, section 17-11 of The School Code directs the school board to certify to the county clerk the amount of money to be raised by tax levy for transportation, education, operations, building and maintenance purposes. Section 17-11 states in full:

"§ 17-11. The school board of each district shall ascertain, as near as practicable, annually, how much money must be raised by special tax for transportation purposes if any and for educational and for operations, building and maintenance purposes for the next ensuing year. Such amounts shall be certified and returned to the county clerk on or before the last Tuesday in September, annually. The certificate shall be signed by the president and clerk or secretary, and may be in the following form:

CERTIFICATE OF TAX LEVY

We hereby certify that we require the sum of dollars, to be levied as a special tax for transportation purposes and the sum of dollars to be levied as a special tax for educational purposes, and the sum of dollars to be levied as a special tax for operations, building and maintenance purposes, on the equalized assessed value of the taxable property of our district, for the year 19....

Signed this day of, 19....

A..... B....., President
C..... D....., Clerk (Secretary)
Dist. No. County

A failure by the school board to file the certificate with the county clerk in the time required shall not vitiate the assessment."

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It is well established that statutory provisions regulating the time of making tax levies are mandatory. Consequently, a levy made and evidenced by the certificate of levy after such time is void. (See 1967 Ill. Att'y. Gen. Op. 43.) In People ex rel. Joseph v. Pennsylvania R.R. Co. (1959), 18 Ill. 2d 61, the Illinois Supreme Court stated at page 63:

" * * *

We have repeatedly held that statutory provisions regulating the time of making tax levies are mandatory; that a levy is void if made after the date fixed by statute; and that the provision of the school law, that failure to certify and return the certificate of tax levy to the county clerk at the time required by the statute shall not vitiate the tax, has no application where the levy is not made in apt time. (People ex rel. Little v. Peoria & Eastern Railway Co. 383 Ill. 79; People ex rel. Ward v. Chicago and Eastern Illinois Railway Co. 365 Ill. 202; People ex rel. Kjellquist v. Chicago, Milwaukee and St. Paul Railway Co. 321 Ill. 499.) We have likewise held that the legal effect of the provisions of the school law with reference to certifying and returning the tax levy to the county clerk required that the levy be made on or before the date specified. People ex rel. Kjellquist v. Chicago, Milwaukee and St. Paul Railway Co. 321 Ill. 499.

* * *

A certificate of tax levy is jurisdictional and a tax levied after the date required by statute is void. (People ex rel. Jasper v. The Wabash Ry. Co. (1921), 296 Ill.

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518, 520.) In the case of The People ex rel. Mercer v. The New York Central R.R. Co. (1921), 301 Ill. 54, the officers of a school district filed a timely certificate of levy. After the time for submitting certificates of levy had passed, the officers submitted a second certificate for a larger sum of money and the county clerk extended the tax in accordance with the sum certified in the latter certificate. The Illinois Supreme Court held that because the evidence would not permit the conclusion that the latter certificate was an amendment to speak the truth of the acts of the board of education prior to the filing of the first certificate, and because the filing of the second certificate was not timely, the latter certificate was invalid. The court further held that it was the duty of the county clerk to extend the taxes in accordance with the first certificate instead of the second certificate. Consequently, that portion of the tax derived from the first certificate was held to be valid and the additional portion based upon the increase reflected in the second certificate was invalid.

I must conclude that the determination and certification of the school district's tax levy by the last Tuesday

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in September as required by section 17-11 of The School Code is mandatory. Furthermore, because the contemplated supplemental levy is not based upon acts of the school board which occurred prior to the filing deadline of the last Tuesday in September, the Illinois Supreme Court's reasoning and decision in The People ex rel. Mercer v. The New York Central R.R. Co. (1921), 301 Ill. 54, are clearly applicable. I must therefore conclude that a supplemental levy filed by a school district based upon a determination made after the last Tuesday in September is invalid.

Your second question asks whether the county clerk may validly extend taxes upon the supplemental levy in question. For the following reasons, I conclude that the county clerk may not.

As established above, statutory provisions regulating the time of making tax levies are mandatory. A mandatory provision in a statute is one which renders the proceedings to which the provision relates void and illegal if the provision is omitted or disregarded. (In re Annexation of Certain Territory to the City of Darien (1973), 16 Ill. App. 3d 140, 145.) It follows that taxes extended upon the basis of a levy which has been made in disregard of a mandatory statutory

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provision are invalid. Therefore, because the supplemental levy in question is void due to the fact that it was made after the date set forth in section 17-11 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 17-11), it follows that taxes extended by the county clerk on the basis of the supplemental levy would be invalid. See People ex rel. Bankson v. C.C.C. & St. L. Ry. Co. (1922), 305 Ill. 460, 466, wherein the Illinois Supreme Court determined that a county clerk is in error when he extends a tax based upon a void certificate of levy submitted by a school district.

Secondly, in the case of People ex rel. Schnipper v. Missouri Pacific R.R. (1928), 332 Ill. 53, 63, the Illinois Supreme Court held that, with regard to the extension of taxes, the county clerk is a ministerial officer. Ministerial action involves the execution of a set task which is definitely prescribed and defined. (Peabody v. Sanitary Dist. of Chicago (1928), 330 Ill. 250, 257.) Pursuant to section 17-11 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 17-11), the county clerk is under a ministerial duty to accept certificates of levy submitted to his office prior to or upon the last Tuesday in September. The statute does not

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direct him to accept certificates representing levies made after that date. He is therefore under no such duty.

Very truly yours,

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