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SPRINGFIELD

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FILE NO. S-1314

**SCHOOLS AND SCHOOL DISTRICTS:**  
Modification of a School  
District Tax Levy

Honorable Terrence J. Hopkins  
State's Attorney  
Franklin County  
202 West Main Street  
Benton, Illinois 62812

Dear Mr. Hopkins:

I have your letter wherein you inquire whether a school district which has already filed a certificate of tax levy with the county clerk may increase its levy and file a new certificate of tax levy reflecting the increase. Your question has arisen in light of the fact that Public Act 80-485, effective September 6, 1977, amended section 17-11 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 17-11) to extend the deadline for filing certificates of tax levy from the last Tuesday in September to the last Tuesday in

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December. You point out that some districts in your county complied with the September deadline and as a result, levied their taxes and filed their certificates prior to the availability of the Department of Local Government Affairs' assessed valuation multiplier. Thus, some of the certificates reflect levies in amounts lower than the amounts which may legally be levied by the particular districts. For the reasons hereinafter stated, it is my opinion that a school district may increase its levy within the limits allowed by law and file a certificate of tax levy reflecting such increase as long as the increase is made prior to the last Tuesday in December which is the deadline for filing certificates of tax levy.

School boards are creatures of the law and can exercise only those powers which are expressly or by necessary implication granted to them. (People ex rel. Smith v. The Wabash Ry. Co. (1940), 374 Ill. 165, 172; Stowell v. Prentiss (1926), 323 Ill. 309, 319; Dato v. Village of Vernon Hills (1965), 62 Ill. App. 2d 274, 277.) There is no express authority for the proposition that a school board may modify its levy and file another certificate after it has filed one

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certificate of tax levy. Such authority, however, arises by necessary implication from the power of a board under The School Code. Ill. Rev. Stat. 1975, ch. 122, par. 1-1 et seq.

Section 17-11 requires that a board ascertain as nearly as practicable the amount of money which it will need for educational and operational purposes, and section 10-20.3 of the Code (Ill. Rev. Stat. 1975, ch. 122, par. 10-20.3) provides that a board has the duty to provide for revenue necessary to maintain the schools in its district. Therefore, if a board has levied less than it actually needs because the maximum permissible levy appears to be less than that amount, the Board has the authority and the duty, in an appropriate and timely manner, to increase its levy to meet necessary expenses when subsequent developments show that the maximum permissible levy is higher than originally anticipated.

There is no statutory or case law prohibiting either the modification of a tax levy prior to the statutory deadline or the attendant modification of the certificate of tax levy. Cases holding amended certificates invalid have dealt with situations where a subsequently filed certificate was not reflective of school board action. (People ex rel.

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Bankson v. The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. (1922), 305 Ill. 460; People ex rel. Mercer v. The New York Central Railroad Company (1921), 301 Ill. 54.)

From those cases one may infer that, had the amended certificates reflected board action taken prior to the filing deadline, the amounts shown on the certificates would have been the valid levy.

The certificate of tax levy which must be filed under section 17-11 is not the levy itself but is evidence of the levy. (People ex rel. Williams v. The Wabash Ry. Co. (1949), 403 Ill. 53, 59.) Therefore, the board of a school district must take action modifying its levy prior to the filing of another certificate. If a board attempts to modify its certificate of tax levy without going on record as having modified its levy, the original certificate will prevail and the later certificate will be void.

Very truly yours,

A T T O R N E Y   G E N E R A L