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SCHOOL DISTRICTS: Intermediate—Elections.

ELECTIONS: Intermediate School Districts.

An intermediate school district is not authorized to call and hold an election to increase the tax rate limitation (Const 1963, art 9, § 6) for a period of years for general operating purposes.

Opinion No. 4838

January 13, 1975.

Honorable Roy Spencer
State Representative
The Capitol
Lansing, Michigan

You have asked for my opinion on the following question:

“Under the present statutes does an intermediate school district have the authority to request an extra voted millage for a prescribed period of time for the purpose of financing operational programs of the intermediate district?”

It has long been settled that school districts and their officers have only such powers as the statutes expressly or impliedly grant to them.¹ *Senghas v L'Anse Creuse Public Schools*, 368 Mich 557, 560; 118 NW2d 975, 977 (1962); *School District of the City of Lansing v State Board of Education*, 367 Mich 591, 595; 116 NW2d 866, 868 (1962). As contrasted with the general power of local school districts to call and hold annual and special elections,² intermediate school districts have more limited powers, and elections of intermediate school districts are held and conducted by and within the constituent local school districts. See, for example, the School Code of 1955, §§ 294e-294f; MCLA 340.294e-340.294f; MSA 15.3294(5)-15.3294(6), providing for the election of the members of the board of education of the intermediate school district, where the provisions of the act have been adopted for the popular election of such members, and §§ 307a-316a; MCLA 340.307a-340.316a; MSA 15.3307(1)-15.3316(1), providing for the submission to the electors of the question of whether the intermediate school districts will have a special education program and provide a millage rate therefor.

While the Constitution contains authority for the holding of an election to increase the tax rate limitation, Const 1963, art 9, § 6, whether a unit of government may bring itself within the constitutional provision depends

¹ Although we customarily think of the term “school district” as referring to a so-called local school district, or K-12 district, an intermediate school district, although performing principally record keeping and administrative functions, clearly comes within the meaning of the term in this context. The School Code of 1955, pt 1, chap 8; MCLA 340.291a *et seq.*; MSA 15.3291(1) *et seq.*

² The School Code of 1955, §§ 34-35; MCLA 340.34-340.35; MSA 15.3034-15.3035 (primary districts); *Id.*, §§ 72-73; MCLA 340.72-340.73; MSA 15.3072-14.3073 (fourth class districts); *Id.*, §§ 108-109; MCLA 340.108-340.109; MSA 15.3108-15.3109 (third class districts); *Id.*, §§ 149, 151; MCLA 340.149, 340.151; MSA 15.3149, 15.3151 (second class districts), and *Id.*, §§ 188a, 227; MCLA 340.188a, 340.227; MSA 15.3188(1), 15.3227 (first class districts).

upon whether the legislature has so authorized. *Butcher v Township of Grosse Ile*, 387 Mich 42, 52; 194 NW2d 845, 848 (1972); *Advisory Opinion re Constitutionality of 1973 PA 1 and 2*, 390 Mich 166, 184; 211 NW2d 28, 34 (1973).

It is the opinion of the Attorney General that an intermediate school district presently is not authorized by statute to call and hold an election to increase the tax rate limitation for a period of not to exceed 20 years for general operating purposes.

It should be noted, however, that an intermediate school district is authorized to levy taxes within the 15 mill limitation for general operating purposes,³ and is assured of a tax rate of at least one-tenth of a mill.⁴ Further, under the provisions of the state school aid act, 1972 PA 258, as amended, § 81; MCLA 388.1181; MSA 15.1919(581), an intermediate school district receives state school aid monies that may be used for general operating purposes.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Public Health.

DAIRIES AND DAIRY PRODUCTS: Milk Containers.

The use of three-quart milk containers is legal as a statute prohibiting their use bears no reasonable relationship to the public health, safety and welfare.

Opinion No. 4845

January 13, 1975.

B. Dale Ball, Director
Michigan Department of Agriculture
Lewis Cass Building
Lansing, Michigan

You have requested my opinion on the legality of the use of three-quart milk containers for the sale of milk in Michigan. Specifically, you inquire whether the fluid milk act, 1965 PA 233, § 6, as amended by 1969 PA 84, § 1; MCLA 288.26; MSA 12.617(106), prohibits the use of such containers. The language of the statute in question, 1965 PA 233, § 6, *supra*, is as follows:

"All fluid milk and milk products shall be packaged for retail sale only in units of 1 gill, ½ liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, ½ gallon, 1 gallon, 1½ gallons, 2 gallons, 2½ gallons or multiples of 1 gallon. Packages in units of less than 1 gill shall be permitted. Each container shall be plainly marked as to its capacity and shall deliver the amount marked on the container."

³ The School Code of 1955, § 298a, as last amended by 1974 PA 109; MCLA 340.298a; MSA 15.3298(1).

⁴ The Property Tax Limitation Act, § 11; MCLA 211.211; MSA 7.71.