

FORREST COUNTY MAY LEVY SPECIAL TAX FOR ITS SCHOOLS

Attorney General Fletcher Renders
An Opinion to County Attorney Hartfield.

NEW COUNTY ENJOYS RIGHTS OF OLD ONE

Creation of New County of Forrest Did Not Change the Meaning of the Law. Decision Means Much to the Schools of the County.

One of the most important questions that was before the board of supervisors at its last meeting in an informal way, was whether the new county of Forrest had the right to levy an additional tax to secure an extension of the school term. This question has been decided in the affirmative by the attorney general and as the matter is of such vital importance to the entire people of Forrest county, the Daily News publishes the decision in full, preceding it by the inquiries propounded by Hon. George Hartfield, Department of Justice, State of Mississippi.

September 17th, 1908.
Hon. George Hartfield,
Attorney Forrest County,
Hattiesburg, Mis.
Dear Sir:—
I have your inquiry as follows:
"The Board of Supervisors of For-

EYE DEFECTS IN THE SCHOOL ROOM



The greater per cent, of eye trouble is acquired or developed during school days. Neglect at this time is responsible for much of the present-day eye trouble. Twenty-five per cent. of all school children suffer from defective eyes. They fall back in their classes and are often taken out of school through ignorance of the cause, when a half hour with an expert optician would have remedied the whole difficulty. Many so-called "dull scholars" are so because of some defect of the eye. Don't neglect the eyes of your children. No charge for consultation.

F. W. QUEEN
Optical Specialist.
Polk Bldg. 110 E. Pine St.

rest County direct me to request your opinion regarding their power to levy additional school taxes to extend the school term beyond the time covered by the state distribution.

See Code of 1892 Section 4047. See Code of 1906 Section 4572, also Notice particularly the addition to the first section above cited as shown in the second section above cited.

Under the Code of 1892 the board of supervisors of Perry county levied 2½ mills additional school tax, and afterwards continued to do so under the code of 1906 without an election, as they might do under the provision contained in Section 4572.

On the first Monday in January, 1908 the County of Forrest was organized out of a part of the County of Perry. Now can the rights of Perry County be imputed to Forrest County so as to authorize Forrest county to continue the 2½ mill additional school tax without an election, or is an election a prerequisite to the levying of an additional school tax?

Also—
See Chapter 72 Laws of 1908. Is this section to be construed independently of Section 4572, Code of 1908, or are the two to be taken together, so as to authorize the levy mentioned in the Acts of 1908 for school purposes subject to the election condition mentioned in the Code Section cited?

Again—
Construing Chapter 72, Laws of 1908, can only two mills be levied for additional school tax, or can a school tax be included in the 16 mills county levy, and then two mills added thereto, thus making three, four or five mills, or more, for additional school tax? To restate the entire proposition in another form—

The County Superintendent of Public Education of Forrest County desires an additional school levy of between 3½ and 4 mills for school purposes. Waiving the question of the expediency of so large an additional school levy, can it be done under the law? And if so, can it be done by Forrest County without an election?

The first question you propound is by no means free from difficulty, and the most diligent research convinces me that the point is one of first impression at least in Mississippi if not in the United States. The statute, Section 4572 of the Code of 1906, reads: "provided that boards of supervisors in those counties where the tax is now being levied shall have the power to continue levying the tax without an election." The word "now" in this statute manifestly refers to the date when the Code of 1906 became operative, to-wit: October 1st, 1906. Its effect is to exempt from the necessity of an election all those counties which were already making the levy at the time the statute became operative. Perry County's territory, Forrest County was created, no territory being included in the new county except such as had formally belonged to Perry. The special Act, Chapter 165 of the laws of 1906, authorizing the creation of Forrest County, is silent upon the particular question be-

fore us, but by numerous provisions of the act, it is evident that it was the general purpose of the legislature to secure to the citizens of the new county all the rights and privileges which pertained to the old. But disregarding the provisions of this special act and looking at the question in the light of principles fairly well established by the authorities I reach the conclusion that the privilege which the statute secured to Perry County, can now be extended to Forrest County and that two and a half mills tax can be extended to the new county without an election. For, it seems to me, the privilege thus conferred upon certain counties stands upon the same basis as though it had been granted by a special act of the legislature. That is to say, the construction would be the same as if a special act had been conferred upon Perry County, by name the right to dispense with an election, assuming, of course, that such an act would be constitutional, in this State. Now, it is stated by a respectable authority that: "A special statute applicable to the territory of a certain county continues applicable to the part of such territory afterward set off for the formation of another county, in the absence of a repeal express or implied of such statute."

11 Cyc. 353.
Thus statement of the text rests upon the case of Lackawanna Co. vs. Stevens, 105 Pa. St. 465.

Turning now to this case, it will be seen that this decision in turn rests upon the earlier Pennsylvania case of Parsons vs. Winslow, 1 Grant 160,

where it is said: "Territory or men once made the objects of legislation remain subject to the laws imposed however the names by which they are designated may be changed." I do not think the authority of these Pennsylvania cases is destroyed by the fact that our Court in Chickasaw County vs. Sumner County, 58 Miss. 619 declined to follow the Pennsylvania Court in its holding as to the liability of the newly created county for the debts of the parent county. That is quite a different question from the one before us now. In my judgment the quoted statement from Parsons vs. Winslow, Supra, is sound and I advise that it be followed.

Coming now to the question of the effect of that part of Chapter 72 of the Laws of 1908 which reads: "Provided, that counties may levy an additional tax of not exceeding two mills on the dollar, to provide funds to maintain the public schools," I find no difficulty in reaching the conclusion that this statute was not designed as a substitute for Section 4572 of the Code, in the sense that the Code provisions may be disregarded in levying the tax, but that it was designated merely to place a limit upon the amount of tax which the board can levy acting in accord with the machinery and methods set out in Section 4572. Surely, the Legislature did not intend in a revenue measure to repeal or disregard the elaborate system provided in the Code. The brief statement in this revenue act, lacking as it does all directions as to how the tax shall be levied and collected, and what property shall be subject to it can not furnish a complete scheme in itself and when resort is had to the Code provisions for direction in one particular, necessarily all the stipulations therein contained would be applicable.

The interesting question presents itself as to whether by reason of this clause in the act of 1908, above referred to, the board of supervisors has authority, provided the right has been obtained by an election or by the fact that the tax was already being levied when the code became operative, to levy more than two mills for school purposes. It is clear, of course, that in case as much as sixteen mills have been levied for state and county purposes other than school purposes, the school levy could not exceed two mills. In other words the State, and County tax can not be greater than sixteen mills unless this amount is not sufficient for school purposes in which case, the total levy can be eighteen mills, provided the additional two mills is needed for the support of the schools and is in fact devoted to this purpose. The statute manifestly means this much, and I think this is all that it does mean. You will observe that the language used is "may levy an additional tax not exceeding two mills etc." It is manifest that without this proviso, the board could levy in accordance with Section 4572, what soever tax is necessary to extend the school term provided the total levy did not exceed sixteen mills. This proviso is clearly not restrictive,

but is rather designed to enlarge the power of the board, and has in my judgment no effect to limit the school tax to two mills, but only to limit the total amount which may be levied, and to make sure that the excess over sixteen mills is devoted to school purposes. I therefore, advise that the board may levy more than two mills, if otherwise authorized to do so, provided the total levy does not exceed eighteen mills.

Another question is submitted, which may be thus stated: In case a county is exempt from the necessity of an election because a certain school tax is being levied at the time the code went into effect, is it empowered to increase the levy without an election, or is it restricted to a levy no greater than the one in effect when the statute became operative?

The exact language of the statute is "provided, that boards of supervisors to continue levying the tax is now being levied shall have the power to continue levying the tax without an election." Shall have power to continue levying the tax? What tax is meant? I can not escape the conclusion that it means the same tax, as to amount, that was being levied when the law became effective. It is clear from a consideration of a former part of the statute that when a certain tax is authorized by the electors voting in an election for that purpose, the board must continue to levy the same tax until another election is held. Clearly without an election, in such a case, there can be no increase of the tax levy. I do not think a county which has secured the right to continue the levy without an election by reason of the tax having been levied at the time the law became operative has any greater power in the premises than a county which has had its rate fixed by an election. In other words the county does not, by reason of the fact that it has been levying a certain tax secure a perpetual exemption from the people's right to veto an increased tax. The right of the county to tax is limited to the rate heretofore in effect.

I conclude that the County of Forrest can not, without an election, levy a greater tax for school purposes than the amount previously levied, to-wit: two and one half mills.

Very respectfully,
R. V. FLETCHER,
Attorney General.



Mrs. Jerome Elmer P. Murphy, of Los Angeles, Cal., who was Miss Patricia Egan, daughter of Morris F. Egan, American minister to Denmark. Their recent marriage at Copenhagen was a notable social event.

TRAVELING MAN'S EXPERIENCE.

"I must tell you my experience on an East bound O. R. & N. R. R. train from Pendleton to LeGrande, Ore., writes Sam A. Garber, a well known traveling man. "I was in the smoking department with some other traveling men when one of them went out into a coach and came back and said, 'There is a woman sick unto death in the car.' I at once got up and went out, found her very ill with cramp colic; her hands and arms were drawn up so you could not straighten them, and, with a deathlike look on her face. Two or three ladies were working with her and giving her whisky. I went to my suit case and got my bottle of Chamberlain's Colic, Cholera and Diarrhoea Remedy (I never travel without it), ran to the water tank, put a double dose of the medicine in the glass, poured some water into it and stirred it with a pencil; then I had quite a time to get the ladies to let me give it to her, but I succeeded. I could at once see the effect and I worked with her, rubbing her hands, and in twenty minutes I gave her another dose. By this time we were almost to LeGrande where I was to leave the train. I gave the bottle to the husband to be used in case another dose should be needed, but by the time the train ran into LeGrande she was all right, and I received the thanks of every passenger in the car." For sale by Hays & Field and The Yellow Pine Pharmacy.

Old subscribers to the Daily News can get the famous White House Cook Book by paying six months in advance at the office only.

If there is anything busier than idle curiosity, will some one please chase it across the stage.

P. P. Pitcher
PUBLIC ACCOUNTANT
HATTIESBURG, - MISSISSIPPI

Best Work at Reasonable Prices
Drop me a Postal

If It Is
MONEY

You want to borrow on jewelry call at our office No. 128 Front St.
M. S. Haisfield.

Piano and
Guitar Lessons
917 River Avenue
Cumberland phone 176

I Am Going To
Advertise

The
Regent
\$3.50 Shoe
For Men

Vice, Patent Leather
and Gun Metal, for
TEN DAYS ONLY

\$3.00

NATHAN'S
Shoe Factory.
East Pine Street

A Cure For Rental
Worries

This plan gives you the profit, but saves you all the trouble. Renting houses is a part of my business.

I have a constant demand for houses.

I secure you prompt collections, prompt settlements and incidentally relieve you of all the details of taxes, insurance, repairs, etc.

Get my figures on this service. They are small.

M. J. EPLEY,
PHONE 666

HATTIESBURG
Business College

Special Summer
Rates for 60 Days

Stenography, Bookkeeping and all collateral branches taught. Our system and methods have been tried by thousands and have proven to be satisfactory. Endorsed by professional and business men everywhere. No charges for securing position. Students may enter any time. Address

J. J. FERGUSON, Principal
Hattiesburg, Mississippi

RAMSEY & CO.
UNDERTAKERS

E P L E Y

FOR

REAL

ESTATE

Fire, Tornado,
Health, Accident,
Liability
and Plate Glass
INSURANCE

BONDS

Headquarters
for the Best
Bargains in
the City. . . .

M. J. EPLEY

Phone 666

Come Where Pleasure Reigns
and Spend a Pleasant Hour

5¢ The 5¢ Casino Theatre

Best Moving Pictures
and Illustrated Songs

Hear Miss Dumont Sing Tonight

New Songs and New Pictures Every Night