

Report To

The Mississippi Legislature



A Limited Review of Taxation by Appointed School Boards and Other Administrative Bodies

June 15, 1994

Mississippi law requires that elected boards of supervisors and city governing boards "shall" raise taxes sufficiently to fund schools as determined by appointed school board members, subject to certain statutory percentage caps on annual increases. A state legislator requested that PEER review the issue of non-elected boards imposing taxes, voicing concerns that this influence could constitute taxation without representation.

As one of three states which give appointed school boards the authority to bind their levying authorities to increase taxes, Mississippi is the only state with multiple appointed school boards in which voters have no direct option of converting such boards into elected boards.

If there is interest in changing school taxation systems, the Legislature has several options: remove the ability of appointed school boards to cause tax increases; provide voters a statutory means for conversion to elected boards; or, make all school boards elected.

The PEER Committee

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**A Limited Review of Taxation by Appointed School Boards
and Other Administrative Bodies**

June 15, 1994

**The PEER Committee
Mississippi Legislature**

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

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June 15, 1994

Honorable Kirk Fordice, Governor
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At its meeting of June 15, 1994, the PEER Committee authorized release of the report entitled **A Limited Review of Taxation by Appointed School Boards and Other Administrative Bodies.**

A handwritten signature in cursive script, appearing to read "Travis Little", written over a horizontal line.

Senator Travis Little, Chairman

**This report does not recommend increased
funding or additional staff.**

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A Limited Review of Taxation by Appointed School Boards and Other Administrative Bodies

June 15, 1994

Executive Summary

In Mississippi, some members of municipal school boards are appointed, while county and consolidated district boards are all elected by the people. Although state law makes elected officials formally responsible for levying taxes to support public schools, it has been argued that, as a practical matter, the school boards themselves are responsible for causing tax increases. Local elected officials, both at the county and municipal level, cannot refuse a school board's budget request if the request is within statutorily established parameters. Because appointed boards are not answerable to the electorate, some maintain that the system amounts to taxation without representation.

Although appointed school boards and some other appointed boards in Mississippi have the ability to cause taxation, state law limits the amount

of such tax increases. Mississippi is one of only three states to give appointed school boards the authority to cause tax increases, and is the only state that does not provide voters the option of converting such boards into elected bodies. The lack of direct representation does not violate constitutional principles addressed in case law. Mississippi courts considering the issue would probably uphold the constitutionality of Mississippi's school finance laws.

If there is interest in changing school taxation systems, the Legislature has at least three options: retain appointed school boards, but remove their ability to cause tax increases; retain appointed school boards with ability to cause tax increases, but provide a statutory means for conversion to elected boards; or, make all school boards elected.

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A Limited Review of Taxation by Appointed School Boards and Other Administrative Bodies

Introduction

Authority

At its meeting on October 12, 1993, the PEER Committee approved a legislative request to review the ability of appointed school boards and other appointed public bodies to cause taxes to be raised in Mississippi. The PEER Committee acted in accordance with MISS. CODE ANN. Section 5-3-57.

Scope and Purpose

The PEER Committee addressed the following issues:

- Does the ability of appointed school boards in Mississippi to cause taxes to be raised without voter approval constitute "taxation without representation?"
- Do other non-elected government entities in Mississippi have similar authority to cause taxes to be raised?
- Has the issue ever been legally challenged in the United States?
- Is there any way to assure that only elected officials have authority to increase taxes?

Method

During the course of this review, PEER:

- reviewed relevant provisions of the Mississippi Code of 1972;
- reviewed relevant case law from Mississippi and other jurisdictions;
- interviewed appropriate staff and obtained information from:
 - Office of the Mississippi Attorney General;
 - Mississippi School Boards Association;
 - Institute of Public Administration, New York;
 - Legal Staff, Mississippi Legislature;

- Mississippi Municipal Association;
- Indiana School Boards Association;
- Office of the Mississippi Secretary of State;
- a Mississippi county tax collector/assessor;
- Mississippi Tax Commission; and,

- reviewed background material on school boards and other appointed bodies.

Overview

In Mississippi, some members of municipal school boards are appointed, while members of county and consolidated district boards are all elected. Although state law categorizes local governing officials as the entities responsible for levying taxes to support public schools, it has been argued that, as a practical matter, the school boards themselves are responsible for levying taxes. Under the framework established for setting school budgets, local elected officials, both at the county and municipal level, cannot refuse a school board's budget request if the request is within statutorily established parameters. Because appointed boards are not answerable to the electorate, some maintain that the system amounts to taxation without representation.

Although appointed school boards and some other appointed boards in Mississippi have the ability to cause tax increases, state law limits the amount of such tax increases. However, Mississippi is one of only three states to give appointed school boards the authority to cause tax increases, and is the only state with multiple appointed school boards that does not provide voters the option of converting such boards into elected bodies. Although Mississippi law is unusual in not providing some taxpayers direct representation in decisionmaking regarding tax increases, this lack of direct representation does not violate constitutional principles addressed in case law.

If there is interest in changing school taxation systems, the Legislature has at least three options for altering the selection of members of school boards: retain appointed school boards, but remove their ability to cause tax increases; retain appointed school boards with taxing authority, but provide a statutory means for conversion to elected boards; or, make all school boards elected.

Summary of Issues and Responses

Does Mississippi have appointed school boards with taxing authority?

Appointed school boards in Mississippi exercise a significant degree of control over the ad valorem taxing process for the support of public schools. Although the Mississippi Code lists the levying authority for these taxes as boards of supervisors and aldermen, those bodies are powerless to deny a budget request from school boards.

Statutory Authority Over Taxation of School Districts

Chapter 57 of Title 37 of the MISSISSIPPI CODE addresses taxation for educational purposes. According to the language of § 37-57-1(1)(b), the “levying authority” for school taxes is “the board of supervisors of the county or the governing authorities of the municipality, whichever levies taxes for and on behalf of the particular school district as provided in paragraphs (a) and (b) of this subsection.” Thus, by statute, school boards do not actually levy taxes.

A persuasive argument can be made that school boards do actually levy taxes because local taxing authorities are powerless to deny a budget request from local boards, so long as the request is within the statutorily imposed limit for the amount of increase allowed. This argument is supported by language in §§ 37-57-1 and 37-7-105 which states that upon receipt of a certified copy of an order adopted by the school board (or the State Board of Education under § 37-57-1) requesting an ad valorem tax effort in support of the school district, the levying authority “shall” levy the requested taxes at a millage rate sufficient to generate the needed funds.

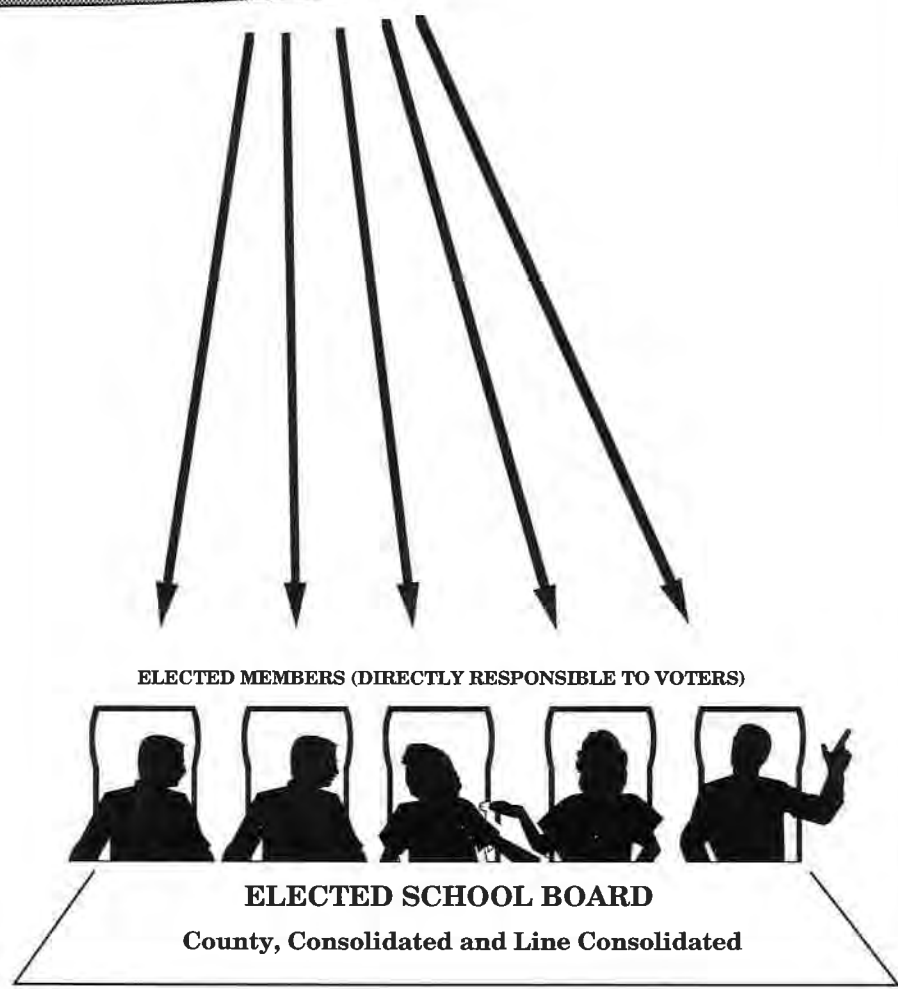
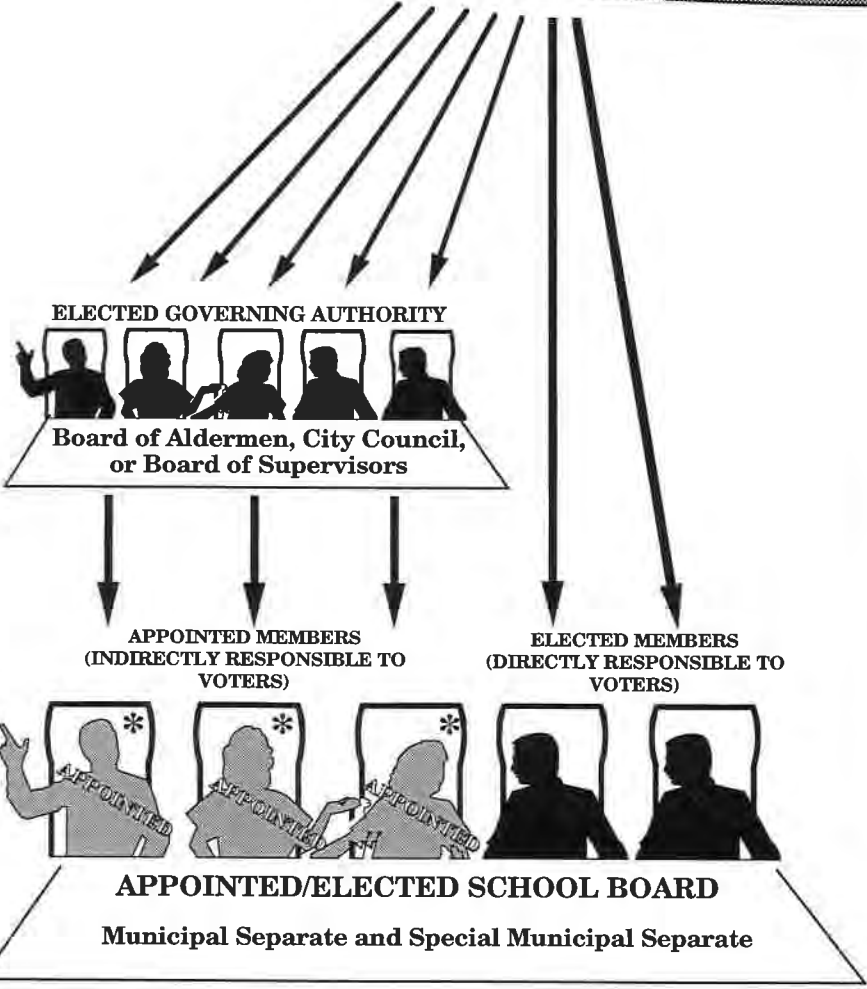
Direct and Indirect Representation in Taxation by School Boards

The distinction between direct and indirect representation is an important one in the context of school boards in Mississippi. Voters who live in school districts with elected school boards have direct representation in the decisionmaking process for selecting a school board because they cast votes to determine who will be chosen to serve on those boards. Voters in districts with appointed boards also have representation, but in an indirect manner. In these districts, local governing authorities select the individuals who serve on local school boards. These elected officials are accountable to voters for those choices when elections are held. (See Exhibit 1, page 4.)

All school districts currently have decisionmaking authority related to ad valorem taxation for budget-setting purposes. However, taxpayers in

**Exhibit 1
Voter Control Of School Board Members**

VOTERS



* NOTE: The actual number of appointed school board members varies from district to district.

SOURCE: PEER Staff

school districts with appointed boards are not directly represented in the process of making those decisions.

Five types of school districts are represented among Mississippi's 149 school districts. Of those five types of school districts, only two feature appointed board members. (See Exhibit 2, page 6, showing the different types of districts and Appendix A, page 13, showing the selection method for each school board in the state.) Current data shows that of 149 total school districts in the state, only 53 have appointed board members (see Exhibit 2, page 6).

*The History of School Boards' Authority Over Taxation
for Budget Setting*

The key distinction in funding methodology for the different types of school districts in Mississippi, at least until passage of the Uniform School Law Act in 1986, was that county, consolidated, and line consolidated school districts made their annual budget requests to their county boards of supervisors, who were not required to levy an amount of taxes sufficient to meet the school districts' budget needs. Under this system, the only means of insuring funding levels afforded the school districts was a provision which required ad valorem tax levies by the boards of supervisors to be at least as high as the previous year to prevent state funding from being canceled.

On the other hand, municipal separate and special municipal separate school districts could ask local governing authorities for up to a twenty-five-mill levy; unlike the county boards of supervisors, the local authorities were obligated by law to levy the amount requested.

This statutory difference was remedied by the Uniform School Law Act, which eliminated millage requirements altogether. More importantly, this act unified the system for setting school district budgets. All five types of districts now operate under the same budgeting system. Under the new system, the growth of school districts' budgets is limited to a statutorily imposed increase, which is codified at §§ 37-57-105 and 37-57-107 of the MISSISSIPPI CODE ANNOTATED.

Under this system, all school districts make their budget requests to the levying entity. For county, consolidated, and line consolidated districts, the levying entity, according to statute, is the county board of supervisors. For municipal separate and special municipal separate districts, the levying entity is the local governing authority for the municipality, usually the board of aldermen. Although listed as the levying authority, county and municipal governments have no say in the amount of the levy itself. By statute, they must levy an amount sufficient to satisfy the budget requests made by their respective school districts.

Exhibit 2

Types of School Districts in Mississippi

Type of District	Description	Number of Board Members	Method of Selection	Number of Such Districts in State
County	Composed of all territory within a county that is not within a separate or consolidated district.	5	Elected	66
Consolidated	Subdivides a county, usually into two districts, although some counties have more.	5	Elected	23
Line Consolidated	Crosses county lines.	5	Elected	3
Municipal Separate*	Serves a city or town, although parts of the county outside the city limits may be served as well.	5	21 have app. members only 31 have app. and elected members	52
Special Municipal Separate*	Countywide district which operates like municipal separate district.	5	4 have elected members only 1 has appointed members only	5
				<hr/> 149

*Under state law, school districts with the word "municipal" in their title are state entities, not municipal corporations.

SOURCE: PEER analysis of data provided by Mississippi School Boards Association.

The Controversy Over Selection of School Board Members

The conflict created in this situation is caused by appointed school boards in Mississippi having the authority to cause taxes to increase, in spite of the Mississippi Code's designation of local governing officials as the levying authority. The argument presented is that the school boards are the true levying authority because the boards of supervisors and aldermen are powerless to deny the board's budget request so long as the requests are within statutory limits.

The authority of appointed school boards to affect taxation concerned the legislator who initiated the request because he felt that such a policy violates the constitutional principle of "no taxation without representation." (Although this concept is an important element of representative government and is alluded to in the Declaration of Independence, it does not appear in either the United States or Mississippi constitutions.) The simplest response to concerns about taxation without representation is found in the statutes regarding school district budget setting and in the discussion of case law and other legal authority found in Appendix B on page 16 of this report. Courts have generally held that so long as upper limits are placed on the authority of appointed boards to levy taxes, the boards' right to do so will be upheld. Mississippi courts considering the issue would likely follow the *Minsinger* and *Wilson* decisions as controlling precedents (discussed in Appendix B, page 16), and would probably uphold the constitutionality of Mississippi's school finance laws. Furthermore, such delegations of power do not constitute taxation without representation.

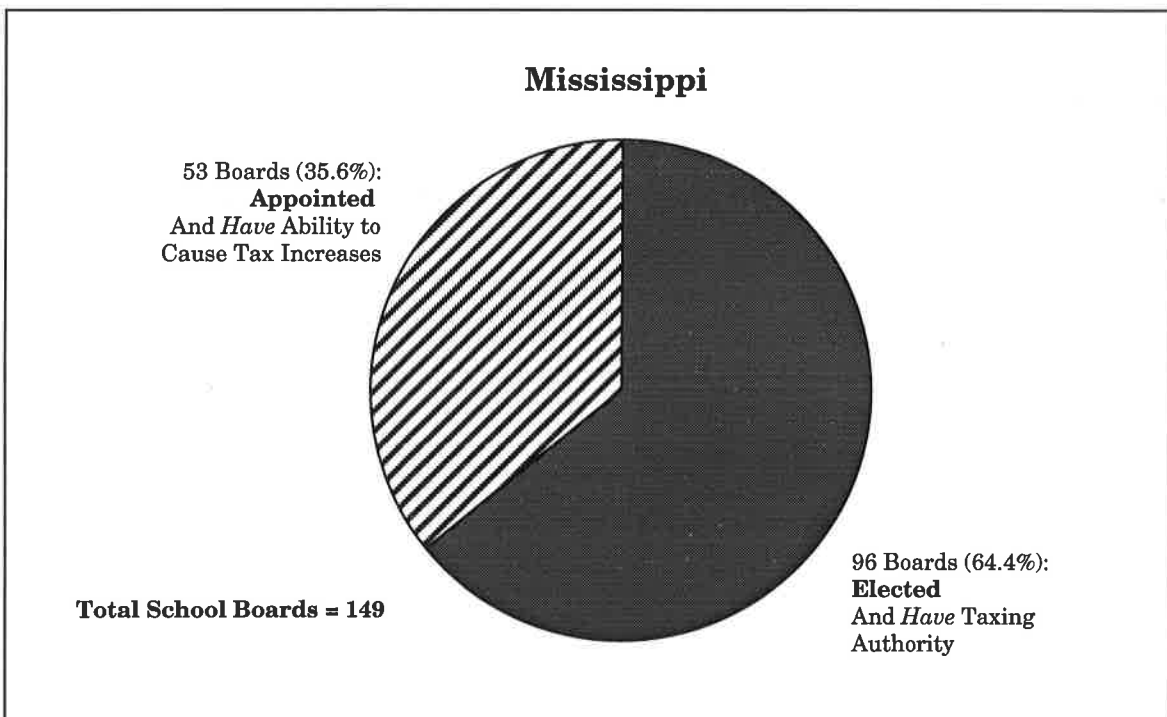
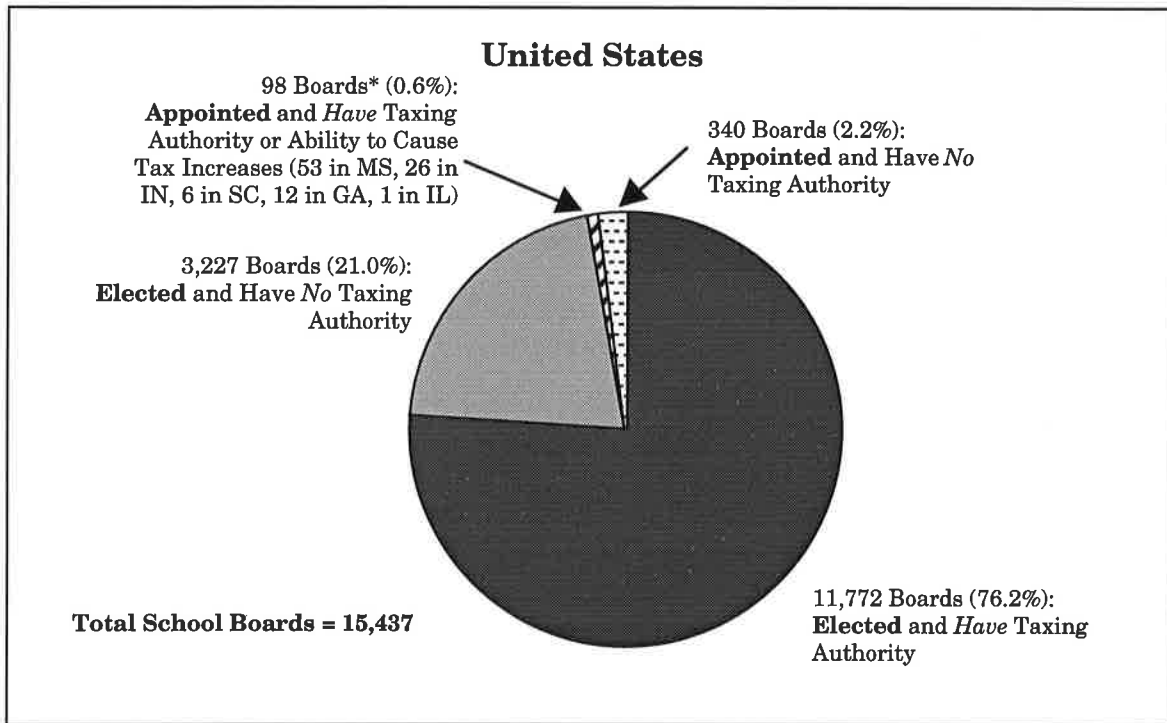
Do appointed school boards in other states have the authority to levy taxes?

Mississippi is one of three states which maintain appointed school boards that can bind the levying authority to increase taxes. Mississippi has fifty-three school boards which fall into this category, while Indiana has twenty-two, and Illinois has one, the public school system of Chicago. The total number of appointed school boards with taxing authority in these three states represents less than one percent of the total school boards in the country (see Exhibit 3, page 8). The trend in recent years has been to take taxing authority away from non-elected boards. Georgia and South Carolina, which had appointed school boards with taxing authority as recently as 1991, no longer have any boards in this category.

Indiana is the only other state with multiple school districts featuring this combination of selection method and authority. A crucial distinction between Mississippi and Indiana law relating to school boards is Mississippi's lack of a statutory opt-out provision. Under Indiana law, methods of selection governing the membership of school boards, including the method for selecting members (i.e., whether they are appointed or elected) can be changed without involving the state legislature. A change

Exhibit 3

Method of Selection and Taxing Authority of Local School Boards,
United States (Including Mississippi) and Mississippi, July 1991



NOTE: Districts that "Have Taxing authority or ability to cause tax increases" include those with the statutory or constitutional authority, with or without voter approval, to establish tax rates, cause an increase in tax rates, or levy taxes within certain limitations; the statutory or constitutional dedication of certain taxes or percentages to local school boards or to public education funding; or the authority to assess localities for the cost of public education.

* In a February 1994 telephone survey of the four states that reported having appointed boards with taxing authority in 1991, PEER found that 76 of the original 98 boards remain in that category (a 22% decline). South Carolina and Georgia no longer had appointed boards with taxing authority as of February 1994.

SOURCE: Graphs produced by PEER based on data from a national survey conducted by Norma E. Szakal and Marcia A. Melton, Division of Legislative Services, Commonwealth of Virginia, July 1991.

in the method of selection for operating school corporations in Indiana may be initiated in one of three ways:

(1) *By filing a petition signed by twenty percent (20%) or more of the voters of the school corporation with the clerk of the circuit court.*

(2) *By a resolution adopted by the governing body of the school corporation.*

(3) *By ordinance adopted by a city legislative body under section 7.5 of this chapter.*

IND. CODE. § 20-4-10.1-5 (1992).

Legislators have introduced bills during several sessions to create similar opt-out provisions under Mississippi school law, without success.

Does the ability of appointed school boards in Mississippi to cause taxes to be raised without voter approval constitute “taxation without representation?”

The influence on taxation exercised by appointed school boards in Mississippi does not constitute taxation without representation. The Constitution vests the Mississippi Legislature with the exclusive authority to provide for taxation in the state. This power over taxation is supreme and explicit and, consistent with this authority, the Legislature may specify a method for levying the ad valorem taxes used for budget-setting purposes. An example of this authority is the omission of taxation from the home rule provisions of the Mississippi Code. By statutory language, school boards do not actually levy taxes. Even if they did so, such a grant of authority to a non-elected board or commission has been generally upheld by the courts so long as limitations are placed on the amount of tax.

Authority for Legislative Control--The Supreme Court of Mississippi has stated that Article IV, Section 33 of the state’s CONSTITUTION, which vests legislative power in the two houses of the Legislature, delegates “all of the legislative power that is not withheld by specific provisions of the Constitution.” *State ex rel. Knox v. Grenada County*, 141 Miss. 701, 722, 105 So. 541, 546 (1925).

The Supreme Court has further noted that “[t]he sovereign power of taxation is vested solely in the state.” *Adams v. Kuykendall*, 83 Miss. 571, 583, 35 So. 830, 831 (1904). Correspondingly, divisions of state government, including state agencies, counties, municipalities and special districts, derive any powers of taxation they may possess only through a delegation of this taxing power by the Legislature. *See Adams, supra* at 831.

Home Rule--Consistent with the Legislature's authority over taxation is the relationship between the power to tax and the concept of "home rule." Home rule statutes give counties (§ 19-3-40) and cities (§ 21-17-5) authority to adopt any rules or laws governing their affairs for which there has been no provision made under general law.

Under the principle of home rule, the Legislature could have delegated its taxing authority to counties and cities, but instead chose to retain this authority. Instead, the Legislature granted school boards and local taxing authorities well-defined roles in arriving at ad valorem taxation decisions within limits it (the Legislature) established.

The exemption of taxation from home rule authority illustrates the Legislature's deliberate exercise of its authority to delegate or retain taxing authority. Similarly, in granting school boards (appointed or elected) authority to participate in the process that results in the levying of ad valorem taxes, the Legislature, an elected body, exercises its constitutional control over taxation. Thus, even though some appointed local boards participate in the process of taxation, and taxpayers' representation is indirect, the Legislature retains ultimate control over the entire process.

The relationship between the broad grant of authority to counties and cities under the home rule provisions and the specific exception to this authority in the area of taxation reflects the Legislature's desire to retain ultimate control over all forms of taxation.

Do other non-elected government entities in Mississippi have similar authority to cause taxes to be raised?

As part of the Mississippi Legislature's taxing authority, it exercises statutory control over the funding and support of governmental entities within the state. The Legislature's authority in this area applies not only to the levying of taxes and setting of fees, but also extends to the selection methods used for the governing boards of these units of government.

The Mississippi Code represents the will of the Legislature in matters of taxation. The Code determines the methods used for selecting governing authorities at all levels of government. Of the many boards and commissions in the state, few can be described as having any type of taxing authority, particularly at the state agency level. At the county and municipal levels of government, the Legislature has often given boards of supervisors and aldermen the authority to levy taxes, which insures accountability to taxpayers for taxing decisions because these officials are always elected. This is also true in those instances where the Legislature itself is the levying entity. The net result is the removal of previously expressed concerns of "taxation without representation."

However, in some instances, the Legislature has chosen indirect methods of representation for taxation issues by statutorily designating an appointed board or commission as the tax-levying authority, subject to certain limitations the Legislature places on the amount of taxes that can be levied.

Twenty-one categories of boards and commissions have taxing authority. The Legislature created or authorized the creation of these districts or authorities, including the method of selecting the governing authority for the district and the method(s) designated for raising revenues. For fifteen of these categories of boards or commissions, the tax-levying authority is the Legislature itself or a board of supervisors, all of whom are elected.

In six instances, however, the Legislature had specified that the levying entity for ad valorem taxes was to be an appointed board. However, for three of those boards or commissions, the taxing authority of the board or commission is not absolute.

Three types of boards with appointed membership have absolute tax-levying authority: the Pearl River Valley Water Supply District, flood control districts, and drainage districts with county commissioners. CODE Section 51-9-139 authorizes the Board of Directors of the Pearl River Valley Water Supply District to levy a tax of up to two mills on all taxable property within the district. CODE Sections 51-35-7, -177, -179, and -333 authorize the boards of commissioners for flood control districts to levy taxes ranging from one to four and one-half mills on various categories of property and lands within their respective districts. Section 51-31-61 authorizes the boards of commissioners for drainage districts with county commissioners to levy a variable tax on all lands in the district.

It is possible to draw certain parallels between the influence of these appointed boards and appointed school boards on taxation. Although both types of bodies can cause tax increases, they are also both subject to the statutorily imposed limits on their power to do so. Appointed boards are generally limited by the imposition of maximum millage rates, while appointed school boards are limited to a maximum percentage increase annually.

Finally, in two instances, the previously mentioned statutory cap on tax increases has not been placed in certain Code provisions. CODE Section 51-7-29 authorizes commissioners of water management districts to levy a uniform assessment against all land lying within the district. Similarly, Section 51-35-333 authorizes flood control districts to levy a special tax on all taxable property within the district. In neither instance is a statutory upper limit placed on the amount of the tax, which may place the taxing authority of these boards outside the confines of case law.

Has the issue ever been legally challenged in the United States?

Legal challenges have been issued to the authority of appointed boards to levy taxes in the United States, usually involving school boards (see Appendix B, page 16). However, the Supreme Court of Mississippi has never directly addressed the issue.

Much of the case law in this area is more than twenty-five years old. One likely explanation is that only three states (Mississippi, Indiana, and Illinois) still have appointed school boards which bind the levying authority to increase taxes or have direct tax-levying authority. (See discussion at page 7.) Of these three states, Indiana gives voters in school districts with appointed boards the option of converting those appointed boards to elected boards, thereby reducing the incentive to file lawsuits over the issue. In Illinois, only the public school system of Chicago has an appointed school board with the ability to cause taxes to be increased.

Most cases which have considered this issue have concluded that legislatures can vest appointed boards with certain powers of taxation, so long as limits are placed on the maximum amount of the tax. If an upper limit is placed on this authority to tax, control over the taxing power continues to reside with the legislature, an elected body. Under Mississippi law, there are limits on the ability of appointed school boards to cause taxes to be increased. Because of these limits, Mississippi's statutory scheme is consistent with constitutional principles and case law.

Appendix A
Composition of Mississippi School Boards,
By County of District, June 1994

<i>County</i>	<i>District</i>	<i>Type</i>	<i>Board Members</i>	
			<i>Appointed</i>	<i>Elected</i>
Adams	Natchez-Adams School District	Special Municipal Separate	5	
Alcorn	Alcorn School District	County		5
	Corinth School District	Municipal Separate	5	
Amite	Amite County School District	County		5
Attala	Attala County School District	County		5
	Kosciusko School District	Municipal Separate	3	2
Benton	Benton County School District	County		5
Bolivar	West Bolivar School District	Consolidated		5
	Bolivar Consolidated School District 1&2	Consolidated		5
	North Bolivar School District	Consolidated		5
	Cleveland School District	Consolidated		5
	Shaw School District	Consolidated		5
	Mound Bayou Public Schools	Consolidated		5
Calhoun	Calhoun County School District	County		5
Carroll	Carroll County School District	County		5
Chickasaw	Chickasaw County School District	County		5
	Houston Separate School District	Municipal Separate	3	2
	Okolona Separate School District	Municipal Separate	3	2
Choctaw	Choctaw County School District	County		5
Claiborne	Claiborne County School District	County		5
Clarke	Enterprise School District	Consolidated		5
	Quitman School District	Consolidated		5
Clay	Clay County School District	County		5
	West Point School District	Municipal Separate	3	2
Coahoma	Coahoma County School District	County		5
	Clarksdale Separate School District	Municipal Separate	5	
Copiah	Copiah County School District	County		5
	Hazlehurst City School District	Municipal Separate	3	2
Covington	Covington County Schools	County		5
DeSoto	DeSoto County School District	County		5
Forrest	Forrest County School District	County		5
	Hattiesburg Public School District	Municipal Separate	5	
	Petal School District	Municipal Separate	3	2
Franklin	Franklin County School District	County		5
George	George County School District	County		5
Greene	Greene County School District	County		5
Grenada	Grenada School District	Special Municipal Separate		5
Hancock	Hancock County School District	County		5
	Bay St. Louis-Waveland School District	Municipal Separate	3	2
Harrison	Harrison County School District	County		5
	Biloxi Public School District	Municipal Separate	5	
	Gulfport School District	Municipal Separate	5	
	Long Beach School District	Municipal Separate	5	
	Pass Christian Public School District	Municipal Separate	3	2
Hinds	Hinds County School District	County		5
	Jackson Public School District	Municipal Separate	5	
	Clinton Public School District	Municipal Separate	4	1
Holmes	Holmes County School District	County		5
	Durant Public School District	Municipal Separate	5	
Humphreys	Humphreys County School District	County		5
Itawamba	Itawamba County School District	County		5
Jackson	Jackson County School District	County		5
	Moss Point Separate School District	Municipal Separate	4	1
	Ocean Springs School District	Municipal Separate	4	1
	Pascagoula Separate School District	Municipal Separate	3	2
Jasper	East Jasper Consolidated School District	Consolidated		5
	West Jasper Consolidated School District	Consolidated		5

Appendix A (continued)
Composition of Mississippi School Boards,
By County of District, June 1994

<i>County</i>	<i>District</i>	<i>Type</i>	<i>Board Members</i>	
			<i>Appointed</i>	<i>Elected</i>
Jefferson	Jefferson County School District	County		5
Jeff Davis	Jefferson Davis County School District	County		5
Jones	Jones County School District	County		5
	Laurel School District	Municipal Separate	5	
Kemper	Kemper County School District	County		5
Lafayette	Lafayette County School District	County		5
	Oxford School District	Municipal Separate	3	2
Lamar	Lamar County School District	County		5
	Lumberton Public School District	Line Consolidated		5
Lauderdale	Lauderdale County School Dist	County		5
	Meridian Public School District	Municipal Separate	5	
Lawrence	Lawrence County School District	County		5
Leake	Leake County School District	County		5
Lee	Lee County School District	County		5
	Nettleton School District	Line Consolidated		5
	Tupelo Public School District	Municipal Separate	5	
Leflore	Leflore County School District	County		5
	Greenwood Public School District	Municipal Separate	5	
Lincoln	Lincoln County School District	County		5
	Brookhaven School District	Municipal Separate	3	2
Lowndes	Lowndes County School District	County		5
	Columbus Municipal School District	Municipal Separate	4	1
Madison	Madison County School District	County		5
	Canton Public School District	Municipal Separate	3	2
Marion	Marion County School District	County		5
	Columbia School District	Municipal Separate	4	1
Marshall	Marshall County School District	County		5
	Holly Springs School District	Municipal Separate	4	1
Monroe	Monroe County School District	County		5
	Aberdeen Separate School District	Municipal Separate	3	2
	Amory School District	Municipal Separate	4	1
Montgomery	Montgomery County School District	County		5
	Winona Separate School District	Municipal Separate	5	
Neshoba	Neshoba County School District	County		5
	Philadelphia Public School District	Municipal Separate	5	
Newton	Newton County School District	County		5
	Newton Municipal School District	Municipal Separate	5	
	Union Public School District	Municipal Separate	5	
Noxubee	Noxubee County School District	County		5
Oktibbeha	Oktibbeha County School District	County		5
	Starkville School District	Municipal Separate	4	1
Panola	North Panola Consolidated School District	Consolidated		5
	South Panola School District	Consolidated		5
Pearl River	Pearl River County School District	County		5
	Picayune School District	Municipal Separate	3	2
	Poplarville Separate School District	Municipal Separate	5	
Perry	Perry County School District	County		5
	Richton School District	Municipal Separate	3	2
Pike	North Pike School District	Consolidated		5
	South Pike School District	Consolidated		5
	McComb School District	Municipal Separate	4	1
Pontotoc	Pontotoc County School District	County		5
	Pontotoc City Schools	Municipal Separate	3	2
Prentiss	Prentiss County School District	County		5
	Baldwyn Separate School District	Municipal Separate	3	2
	Booneville School District	Municipal Separate	5	
Quitman	Quitman County School District	County		5

Appendix A (continued)
Composition of Mississippi School Boards,
By County of District, June 1994

<i>County</i>	<i>District</i>	<i>Type</i>	<i>Board Members</i>	
			<i>Appointed</i>	<i>Elected</i>
Rankin	Rankin County School District	County		5
	Pearl Public School District	Municipal Separate	5	
Scott	Scott County School District	County		5
	Forest Municipal School District	Municipal Separate	3	2
Sharkey	South Delta School District	Consolidated		5
Simpson	Simpson County School District	County		5
Smith	Smith County School District	County		5
Stone	Stone County School District	County		5
Sunflower	Sunflower County School District	County		5
	Drew School District	Municipal Separate	3	2
	Indianola School District	Municipal Separate	4	1
Tallahatchie	E. Tallahatchie Consolidated School District	Consolidated		5
	W. Tallahatchie Consolidated School District	Consolidated		5
Tate	Tate County School District	County		5
	Senatobia Municipal School District	Municipal Separate	3	2
Tippah	North Tippah School District	Consolidated		5
	South Tippah School District	Consolidated		5
Tishomingo	Tishomingo/Iuka School District	Special Municipal Separate		5
Tunica	Tunica School District	County		5
Union	Union County School District	County		5
	New Albany Public Schools	Municipal Separate	4	1
Walthall	Walthall County School District	County		5
Warren	Vicksburg-Warren School District	Special Municipal Separate		5
Washington	Hollandale School District	Consolidated		5
	Leland Consolidated School District	Consolidated		5
	Western Line School District	Line Consolidated		5
	Greenville Public Schools	Municipal Separate	5	
Wayne	Wayne County School District	County		5
Webster	Webster County School District	County		5
Wilkinson	Wilkinson County School District	County		5
Winston	Louisville Municipal School Dist	Special Municipal Separate		5
Yalobusha	Coffeetown School District	Consolidated		5
	Water Valley School District	Consolidated		5
Yazoo	Yazoo County School District	County		5
	Yazoo City Separate School District	Municipal Separate	5	

SOURCE: PEER analysis of Mississippi School Boards Association data.

Appendix B

Case Law Related to Taxing Authority of Appointed Boards

I. Case Law Related to Taxing Authority of Appointed School Boards

Even if school boards are in reality the true levying authority for ad valorem school taxes, an examination of case law provides an answer to the claim that such authority constitutes taxation without representation. There have been multiple challenges to the authority of appointed school boards to levy taxes. One of the leading cases in this area of the law is *Minsinger v. Rau*, 236 Pa. 327, 84 A. 902 (1912). The *Minsinger* Court found the delegation of taxing authority to an appointive board in that instance to be lawful, and held that so long as the Legislature set a maximum limit for taxation purposes, there was no unlawful delegation of taxing power to a nonrepresentative body. The *Minsinger* decision, although it primarily addressed the taxing authority of appointed school boards, has also been cited many times under principles of law relating to the taxing authority of appointed boards generally. (For a discussion of that issue, see Section II of this Appendix).

The issue of the taxing authority of appointed school boards was revisited in *Wilson v. School District of Philadelphia*, 328 Pa. 225, 195 A. 90 (1937). In *Wilson*, the plaintiff (Wilson) sought to prevent the Philadelphia school board from levying or attempting to collect taxes for school purposes. Following a lengthy discussion, the Supreme Court of Pennsylvania concluded that the act which authorized the levy of taxes by the school board was an unlawful delegation of the legislature's taxing authority.

The court first noted that the power to tax was the exclusive domain of the legislature, 195 A. at 94, and that a legislature could not delegate its taxing authority, directly or indirectly, to any other body or governmental agency. *Id.* at 93. However, the court noted that, in certain instances, delegation of the taxing power was allowable, particularly when given to smaller units of state government, such as municipal bodies chosen by the people. The court felt that so long as supervisory control was maintained in the hands of the elected body, the taxing authority was not actually removed from the control of the people. *Id.* at 94.

In *Wilson*, the court concluded that the school tax in question was an improper delegation of taxing authority. Although teacher and staff member salaries were fixed by law, the law did not fix the number of employees. Thus, the court concluded that the school board had been given total (and improper) discretion in setting limits on the number of staff hired. "The uncertainty of the tax rate comes from the uncertainty of the

amount that is necessary to pay the teaching staff, which may be increased without interference.” 195 A. at 97.

Although the court in *Wilson* found the delegation of taxing authority to be improper, it outlined three important factors which, if followed, would allow a delegation of taxing authority to an appointed school board to withstand scrutiny. The court listed the following criteria as important in determining whether a delegation of taxing authority was improper:

(1) The delegation of administrative details, where delegation of power is raised as an issue, is not a violation of the fundamental law.

(2) In instances where the court has interfered with administrative powers of school boards, the interference flowed from the school boards' violation of express words of statutes which defined their powers, or on facts indicating bad faith and violation of their public duty.

(3) The Court [the Supreme Court of Pennsylvania] would not question the policies of school boards “so long as the board is acting within the scope of its statutory authority, and in good faith.”

Wilson, 195 A. at 98.

Later cases from the same jurisdiction were often careful to limit the application of the *Wilson* case to the factual situation presented there.

[T]he board [in Wilson] had the power to increase the teaching and supervising staff without limit, which implied a like power to increase the tax rate. It was held that the delegation to an appointed body of the effective power to impose taxes in an unlimited amount was unconstitutional.

Here, in contrast, the challenged delegation does not involve a grant of the power to tax.

Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 294 (Pa. 1975)

Some later cases have misconstrued the holding in *Wilson* to assert the proposition that appointed school boards could not directly levy taxes under any circumstances. “Because the General Assembly may delegate its legislative power to levy taxes only to elected officials, the Philadelphia

School Board does not have direct power to levy local taxes.” *Danson v. Casey*, 399 A.2d 360, 364 (Pa. 1979)(using *Wilson* as support for the proposition). See also, *School District v. Council of Philadelphia*, 566 A.2d 352, 356 (Pa. Cmwlth. 1989)(citing *Danson* as support).

Under MISSISSIPPI CODE ANNOTATED § 37-57-107, the upper limit placed on the amount taxes may be increased from year to year is expressed as a percentage. Section 37-57-107 provides that “the aggregate receipts from taxes levied for school district purposes pursuant to Sections 37-57-105 and 37-57-1 shall not exceed the aggregate receipts from those sources during any one (1) of the immediately preceding three (3) fiscal years, as determined by the school board, plus an increase not to exceed five percent (5%).” Although the limit is expressed as a percentage, it is a finite number, which means that Mississippi’s law satisfies the holding of the *Minsinger* case. The specific nature of this statutory cap also distinguishes Mississippi’s law from the problem expressed under the facts of the *Wilson* case.

The taxing authority of appointed school boards has not been a hotly litigated issue in recent years. This is particularly so in Mississippi, one of the few states in the country that still has such boards. Mississippi’s statutory plan for controlling the authority of appointed school boards to cause taxes to be increased is consistent with the *Minsinger* and *Wilson* decisions. Mississippi courts considering the issue would likely follow *Minsinger* and *Wilson* as controlling precedents, and would probably uphold the constitutionality of Mississippi’s school finance laws.

II. Case Law Related to Taxing Authority of Other Appointed Boards

The broader issue of the taxing authority of appointed boards in general has also been addressed in case law. The leading case in the field is the aforementioned *Minsinger v. Rau*, 236 Pa. 327, 84 A. 902 (1912). Like *Wilson*, *Minsinger* originated in Pennsylvania and also concerned the taxing power of an appointed school board (as do many cases in this area of the law). However, the broader holding of the *Minsinger* case has been extended to appointed boards generally and reads as follows:

Practically the Legislature itself has fixed the tax levy at a maximum of six mills, and simply leaves to its agents the privilege of collecting not less than five mills in any one year. This cannot properly be objected to as unrepugnant or as an unlawful delegation of legislative power to an unrepresentative body.

Minsinger, 84 A. at 903.

The holding in *Minsinger* was also cited as authority for the following proposition in the legal encyclopedia *Corpus Juris Secundum* (C.J.S.): "Such delegation [of the taxing power] is not unlawful although made to a nonelective body, at least where the legislature has fixed the maximum limit of the tax[.]" 84 C.J.S. *Taxation* § 8, (1954). Later cases have adopted the reasoning used in the *Minsinger* decision as well. *Walsh v. School District of Philadelphia*, 343 Pa. 178, 178, 22 A.2d, 909, 918 (1941); *Moore v. School District of Pittsburgh*, 338 Pa. 466, 470-71, 13 A.2d 29, 31-32 (1940). See also, *Greater Poughkeepsie Library District v. Poughkeepsie*, 618 N.E.2d 127, 132 (N.Y. 1993)(approving taxation power by local appointed boards where legislative and voter oversight are present); *Latham v. Board of Education of the City of Chicago*, 31 Ill.2d 178, 186-87, 201 N.E.2d 111, 116 (1964)(noting a legislature's general authority to create public corporations and specifically noting that in the case at hand, the board's functions were expressly defined, as were the maximum rates for the levy of taxes).

The *Minsinger* and *Wilson* cases reached differing results because they featured contrasting sets of facts. The *Wilson* Court, which found that the legislature had failed to limit the amount of tax that could be assessed, implied that it would have reached a different result if a limit had been placed on the school board's authority to levy taxes.

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