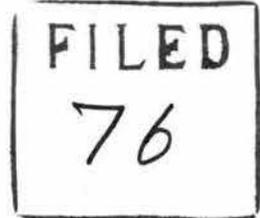


HEALTH:  
HOSPITALS:  
COUNTY COURT:

The dissolution of a county public health center can only be accomplished as provided by statute. County court without authority to reduce tax rate voted for county public health center.

October 7, 1952



Honorable Lawson Romjue  
Prosecuting Attorney  
Macon County  
Macon, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which reads:

"The County Court of Macon County has directed me to request your opinion under the provisions of Sections 205.010--205.130, Revised Statutes of Missouri, 1949, inclusive, as amended by Re-enacted Laws of 1951, H. B. 307, upon the questions hereinafter set out.

"The pertinent facts are that at an election a few years ago when the original act was in effect the people of this County voted to establish a Health Center and same has been in operation. A one mill tax has been levied but no bonds have been issued. The excess money obtained by the levy of the one mill tax has been held and a good part of it invested in United States Bonds for the benefit of the Health Center. There now appears to be a considerable feeling among the people of the County that the Health Center should not be continued.

"Questions: 1. May the Health Center be abolished by the people of the County. 2. If the answer to the preceding question is

Honorable Lawson Romjue

in the affirmative, what method may be employed. 3. May the County Court reduce the tax below one mill per \$100 valuation if the operation of the Health Center is continued."

The original act providing for the establishment of county health centers is contained in Sections 205.010 through 205.130, RSMo 1949. Several of those sections have since been repealed or amended by the Laws of 1951.

In the original act, under which your county health center was established, Section 205.010 provided for the manner in which a health center was to be established, and reads as follows:

"Any county or group of counties, subject to provisions of the Constitution of the state of Missouri, may establish, maintain and manage and operate a public county health center in the following manner: Whenever the county court or courts shall be presented with a petition signed by ten per cent or more of the qualified voters in the county or counties affected as determined by the number of votes cast for governor at the preceding general election, asking that an annual tax be levied for the establishment, building, maintaining of a public health center and the maintenance of such personnel as may be needed for the operation of such center and shall specify in their petition, the maximum amount of money proposed for said purposes, such county court or courts shall submit the question to the qualified voters of the county or counties at the next general election to be held in the county or counties or at a special election called for that purpose, first giving ninety days' notice thereof in one or more newspapers published in the county or counties, if any be so published, and if not so published, by posting written or printed notices in each township of the county or counties, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed

Honorable Lawson Romjue

property of said county or counties, which tax shall not exceed one mill on the dollar, for a period of time not exceeding twenty years, and be for the issue of county bonds to provide funds for the purchase of a site or sites, the erection thereon of a public health center and for the support of the same including necessary personnel; which said election shall be held at the usual voting places in the county or counties for voting upon county officers, and shall be canvassed in the same manner as the vote for county officers is canvassed."

The above section has been amended by the Laws of 1951. However, the same procedure for establishing a county health center and the levying of a tax is generally followed in the amended law.

It will thus be seen that under the above-quoted statute, in both its original and amended form, the county public health center is a creature of the Legislature and comes into existence in the manner provided by legislative enactment.

We believe that in this regard it can be compared to a municipal corporation whose existence is also dependent upon laws enacted by the Legislature.

A study of all of the sections relating to county public health centers shows that there is no statutory provision providing for the dissolution of a public health center once it has been established in the manner provided by law, and specifically we find no statutory procedure which would permit the people of the county or the county court to follow for the purpose of dissolving a county health center.

Looking to the law relating to the dissolution of municipal corporations, the Supreme Court of Missouri, in the case of *In re City of Kinloch*, 242 S.W. (2d) 59, said the following at l.c. 62:

" \* \* \* A municipal corporation when once incorporated can only become disincorporated by resorting to the proceedings pointed out by statute. \* \* \*"

Again in the case of *State ex rel. and to Use of Behrens v. Crismon*, 188 S.W. (2d) 937, 354 Mo. 174, the Supreme Court, at S.W. l.c. 939, said:

Honorable Lawson Romjue

"We think respondents' contentions overlook certain fundamental principles of the law relating to the municipal corporations.

'The power to create or establish municipal corporations, or to enlarge or diminish their area, to reorganize their governments, or to dissolve or abolish them altogether is a political function which rests solely in the legislative branch of the government, and in the absence of constitutional restrictions, the power is practically unlimited.'

\* \* \*

\* \* \* \* \*

" \* \* \* In short, unless otherwise specially provided by the legislature, the nature and constitution of our municipal corporations, as well as the purposes they are created to subserve, are such that they can, in the author's judgment, only be dissolved by the legislature, or pursuant to legislative enactment. They may become inert or dormant, or their functions may be suspended, for want of officers or of inhabitants; but dissolved, when created by an act of the legislature, and once in existence, they cannot be, by reason of any default or abuse of the powers conferred, either on the part of the officers or inhabitants of the incorporated place. As they can exist only by legislative sanction, so they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision.'" (Emphasis in first paragraph ours.)

In view of the above authorities it is our thought that county public health centers, whose creations are provided for by legislative enactment, once in existence can only be dissolved by an act of the Legislature providing for their dissolution or providing for the procedure by which they may be dissolved. As previously stated, there is presently no statutory provision providing for the manner in which a county public health center may be dissolved.

In view of the foregoing your first question is answered in the negative.

Honorable Lawson Romjue

Proceeding to your second question, at the time the health center in your county was formed Section 205.010, RSMo 1949, as originally enacted, was in effect. Under the provisions of that statute when the election was had to organize a health center the tax was also voted to provide for its maintenance and operation.

Under the old section the tax which was voted should have been for a period of time not exceeding twenty years. In other words, when the tax was voted the amount so voted was to be levied and collected without change for a specific period of time.

Under Section 205.010, as amended, the time limitation is omitted, and it is provided that the "notices shall include the text of the petition and state the rate of tax to be levied annually thereafter upon the assessed property of the county." Therefore, under the new section the tax rate voted would be one to be levied "annually thereafter."

Under the original Section 205.010, or that section as amended, it would seem that the tax rate voted would have to remain constant and not subject to change. Furthermore, upon looking at the other statutes pertaining to county public health centers, nowhere does it appear that the county court is given authority to reduce the tax rate below that originally voted.

Consequently, your third question is answered in the negative.

#### CONCLUSION

Therefore, it is the opinion of this department that county public health centers can only be dissolved by an act of the Legislature providing for their dissolution or providing for the procedure by which they may be dissolved, and that they cannot presently be abolished by the people of the county in the absence of a statutory provision permitting it.

It is also the opinion of this department that the county court is without authority to reduce the tax rate originally voted and to be levied for the maintenance and operation of a public health center.

Respectfully submitted,

APPROVED:

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J. E. TAYLOR  
Attorney General

RICHARD F. THOMPSON  
Assistant Attorney General