

TAXATION:  
COUNTY LIBRARY:  
ELECTION:

Majority vote only is necessary for establishment of county library under provisions of Sec. 14767, R.S. Mo. 1939. Senate Bill 370, 63rd General Assembly, is authorization for levy of library tax in addition to constitutional limit and does not require two-thirds vote.

May 22, 1947



Honorable Wilson D. Hill  
Prosecuting Attorney  
Ray County  
Richmond, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading as follows:

"May I have an opinion based upon the following facts:

"On March 14, 1946, a petition in due form was presented to the County Court of Ray County, a third class County, based upon Section 14767 Revised Statutes 1939 and containing the signatures of the required number of petitioners for the establishment of a free County Library and asking for the imposition of a one mill tax on real estate in this County to support the same.

"Under the provisions of the law, there was a proper election held on 2nd of April, 1946, and in the County Clerk's report, on April 5, 1946, it was certified that the following votes were cast:

For the establishment of a Library,	1268 votes
Against the establishment of a Library,	544 votes
For one mill tax,	1217 votes
Against one mill tax,	570 votes

"Thereupon, the County Court on April 5, 1946, made its order, declaring the said Library duly established and a body corporate.

"A few public utilities have refused to pay the one mill tax assessed against their property, because the New Constitution of Missouri became effective, 1 April, 1945, and some of its provisions seem to conflict with the above cited Statute, especially Art. X, Sec. 11 'C'.

"The question is, whether or not it now requires a two-thirds vote to establish a library District and two-thirds vote under Article X, Section 11, 'c' to increase the tax rate one mill, instead of the majority as provided for in Section 14767."

Two questions are presented in your request: (1) Is a two-thirds vote necessary to establish a library district, and (2) is a two-thirds vote necessary to authorize the imposition of a tax for the support of such a library?

Since the answer to both questions is "no," it is not necessary in this opinion to discuss the effect of an actual two-thirds majority vote in your election for establishing a library district and for imposing a tax of one mill, since a majority vote is all that is required in such election.

Section 14767, R.S. Mo. 1939, which provides for the establishment of a county library district, reads, in part, as follows:

"\* \* \* And if, from returns of such election, which shall be certified to the county court, the majority of all the votes cast on such propositions at such election shall be

'for establishing \_\_\_\_\_ county library district,'

and for the tax for a free county library, the county court shall enter of record a brief recital of such returns and that there has been established

'\_\_\_\_\_ county library district,'

and thereafter such

' \_\_\_\_\_ county library district'

shall be considered and held to be established, shall be a body corporate, and known as such; and the tax specified in such notice shall, subject to provisions herein below of this section, be levied and collected, from year to year, in like manner with other taxes in the rural school districts of said county. \* \* \*

It is obvious that a majority vote only is necessary for the establishment of a library district and for the authorization of the imposition of the tax levy.

Section 14767 further provides as follows:

"\* \* \* that such taxes shall cease, in case the regular voters of any such district shall so determine by a majority vote at any annual election held therein, after petition, order of court, and notice of such election and of the purpose thereof, first having been made, filed and given, as in the case of establishing such county library district."

It will be seen that such tax levy will continue until a majority vote shall be cast against such levy at an annual election. No limit on the length of time the tax is authorized to be levied is found except that quoted above.

Section 14767 has never been repealed by the Legislature, and we are unable to find any section or clause of the Constitution or of any statute of this state which repeals such section by implication, or which is inconsistent with Section 14767.

We are enclosing a copy of an official opinion of this department rendered under date of April 1, 1947, to Joe N. Brown, in which we held that Senate Bill No. 370 of the 63rd General Assembly, which bill became effective May 13, 1946, was the authorizing by the Legislature of the tax levy provided for in Section 14767, above the constitutional limit found in Section 11 (b) of Article X of the Constitution, and that Senate Bill No. 370 was enacted pursuant to the second clause of Section 11 (c) of Article X of the Constitution.

We are also enclosing a copy of an official opinion of this department rendered under date of March 28, 1947, to Marshall Craig, which clearly points out that the two-thirds vote required under the first clause of Section 11 (c) of Article X of the Constitution has nothing whatsoever to do with the second clause of such section. This will be found on pages 6 to 10, inclusive, of the opinion to Mr. Craig.

The Legislature, under authority of the second clause of Section 11 (c) of Article X of the Constitution, can enact, and did in Senate Bill No. 370 enact legislation with regard to library taxes in addition to the limit found in Section 11 (b) of Article X, and such action is not affected in any way by the first clause of Section 11 (c) of Article X and the two-thirds vote requirement found therein.

Since Section 14767 was in effect on April 5, 1946, and a majority of the voters voted for the establishment of a county library district and for a one mill tax, and since Senate Bill No. 370 became effective May 13, 1946, the one mill levy authorized at such election for a period lasting until such levy should be repealed at an annual election is in addition to the constitutional limit found in Section 11 (b) of Article X, and such an election is a valid authorization for the levy of such tax.

#### CONCLUSION

The one mill tax voted April 5, 1946, in Ray County under authority of Section 14767, R. S. Mo. 1939, is a tax levy in addition to the limit found in Section 11 (b) of Article X of the Constitution, and is a valid authorization for the imposition of a one mill tax. A majority vote at such election was sufficient to authorize the levy of such tax.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

CBB:HG