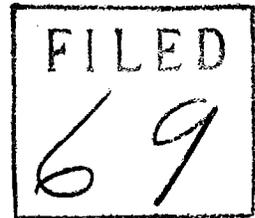


TAXATION: The only procedure to increase tax levy for county purposes, when the maximum tax has been assessed and levied, is by a COUNTY: vote of 2/3 qualified electors voting thereon and for said increased tax.

December 11, 1947



Honorable James L. Paul  
Prosecuting Attorney  
McDonald County  
Pineville, Missouri

12/15

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"The finances of this county indicate that for the year 1946 the county will have a deficit of a little more than \$6000.00 and for the year 1947 a deficit of approximately \$8000.00.

"This county is already levying the 50% maximum levy for county revenue. Is it possible that under Section 11041 of the revised statutes of the State of Missouri, that an additional fifteen-cent levy making a total of sixty-five cent levy be assessed for the year 1948, by order of the Circuit Judge in order to partly eliminate a portion of this deficit, or will this additional fifteen-cent levy have to be submitted to a vote of the people as provided for under section 11046?"

Section 11 (b) of Article X, Constitution of Missouri, 1945, provides that any tax on property shall not exceed thirty-five cents on the hundred dollars assessed valuation in counties having three hundred million dollars or more assessed valuation and fifty cents on the hundred dollars assessed valuation in all other counties. Section 11 (b) reads:

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

"For municipalities--one dollar on the hundred dollars assessed valuation;

"For counties--thirty-five cents on the hundred dollars assessed valuation in

counties having three hundred million dollars, or more, assessed valuation, and fifty cents on the hundred dollars assessed valuation in all other counties;

"For school districts formed of cities and towns--one dollar on the hundred dollars assessed valuation, except that in the City of St. Louis the annual rate shall not exceed eighty-nine cents on the hundred dollars assessed valuation;

"For all other school districts--sixty-five cents on the hundred dollars assessed valuation."

The 63rd General Assembly enacted legislation to conform to the foregoing constitutional provision, Section 11046, page 1781, Laws of Missouri, 1945. However, the 64th General Assembly repealed that section and enacted in lieu thereof Section 11046 in House Bill No. 77. The only difference in the two laws is that the latter does not include the restriction contained in the former, that no county court shall order a rate of tax levy that will produce mathematically more than ten per cent in excess of taxes levied for the previous year. House Bill No. 77, passed by the 64th General Assembly, also contained an emergency clause. Therefore, Section 11046 of said bill became effective upon approval by the Governor on May 19, 1947, and reads:

"For county purposes the annual tax on property, not including taxes for the payment of valid bonded indebtedness or renewal bonds issued in lieu thereof, shall not exceed the rates herein specified: In counties having three hundred million dollars or more assessed valuation the rates shall not exceed thirty-five cents on the hundred dollars assessed valuation; and in counties having less than three hundred million dollars assessed valuation the rate shall not exceed fifty cents. Provided, that in any county the maximum rates of taxation as herein limited may be increased for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors of the county voting thereon shall vote therefor."

Section 11 (c) of Article X, Constitution of Missouri, 1945, further provides that in all counties the rate of taxation herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of increase is submitted to a vote of two-thirds of the qualified electors voting thereon shall vote therefor. Furthermore, said provision does include an exception for the county court in raising the maximum tax levy herein limited which may be done when authorized by law for libraries, hospitals, public health, recreational grounds and museum purposes. Said provision reads:

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

Section 11 (b) of Article X, Constitution of Missouri, 1945, further authorizes the Legislature to enact legislation permitting a county to levy taxes other than ad valorem taxes for its essential purposes. Also, under Section 12 (a) of Article X, Constitution of Missouri, 1945, additional taxes are authorized for road and bridge purposes.

You state in your request that your county has already levied the maximum allowed for county purposes which is fifty cents upon the hundred dollars assessed valuation of property. The county now desires to make an additional levy of fifteen cents, making the total assessed levy sixty-five cents on the hundred dollars assessed valuation of property. You state that the additional levy is to take care of a deficit amounting to \$6,000.00 for 1946, and \$8,000.00 for 1947. You inquire if this additional levy may be made by order of the circuit court or by a vote of the people. Section 11041, passed by

the 63rd General Assembly, page 1779, Laws of Missouri, 1945, provides that no other tax for any purpose may be assessed except under certain conditions which are, that upon request of the county court, the prosecuting attorney shall present a petition to the circuit court setting forth facts and specific reasons for assessing other taxes. If the circuit court is satisfied of the necessity of additional taxes, and that to do so will not violate the Constitution, he shall order the county court to assess, levy and collect such additional tax. Said provision reads:

"No other tax for any purpose shall be assessed, levied or collected, except under the following limitations and conditions, viz: The prosecuting attorney or county counselor of any county, upon the request of the county court of such county--which request shall be of record with the proceedings of said court, and such court being first satisfied that there exists a necessity for the assessment, levy and collection of other taxes than those enumerated and specified in the preceding section--shall present a petition to the circuit court of his county, or to the judge thereof in vacation, setting forth the facts and specifying the reasons why such other tax or taxes should be assessed, levied and collected; and such circuit court or judge thereof, upon being satisfied of the necessity for such other tax or taxes, and that the assessment, levy and collection thereof will not be in conflict with the Constitution and laws of this state, shall make an order directed to the county court of such county, commanding such court to have assessed, levied and collected such other tax or taxes, and shall enforce such order by mandamus or otherwise. Such order, when so granted, shall be a continuous order, and shall authorize the annual assessment, levy and collection of such other tax or taxes for the purposes in the order mentioned and specified, and until such order be modified, set aside and annulled by the circuit court or judge thereof granting the same: Provided, that no such order shall be modified, set aside or annulled, unless it shall appear to the satisfaction of such circuit court, or judge thereof, that the taxes so ordered to be assessed, levied and collected are not authorized by the Constitution and

laws of this state, or unless it shall appear to said circuit court, or judge thereof, that the necessity for such other tax or taxes, or any part thereof, no longer exists."

In view of the foregoing constitution inhibitions against increasing taxes over that allowed as a maximum, in this case fifty cents on the hundred dollars assessed valuation of property, and since your county has already assessed and levied the maximum, the provisions of Section 11041, supra, are not applicable in this instance. Had the maximum tax not been previously assessed and levied, then such procedure would apply. (See: State ex rel. Wabash Ky. Co. 169 Mo. 563, l.c. 577.)

Under Section 11046, supra, the matter of increasing taxes in your county fifteen cents per hundred dollars assessed valuation of property may be submitted to a vote of the people, and if two-thirds of the qualified electors of said county voting thereon shall vote for said additional tax, then it shall be assessed, levied and collected, provided the expenditure represented by this deficit for 1946 and 1947 was properly budgeted and came within the anticipated revenue for the year. The General Assembly could have limited the amount of additional tax allowed over and above the fifty cents levy under Section 11 (c) of Article X, Constitution of Missouri, 1945, but at the present time there is no statutory limitation upon such taxes. Under Section 11046, page 1781, Laws of Missouri, 1945, there was a limitation of a levy not to exceed ten per cent of taxes levied for the previous year. However, as hereinabove shown, when the 64th General Assembly repealed that section and enacted a new one known as Section 11046 in House Bill No. 77, that part was deleted therefrom; so there is now no statutory or constitutional limitation upon the amount of additional taxes that may be levied when two-thirds of the qualified electors of the county voting thereon vote for same.

In passing, we would like to make a few remarks about voting this additional tax to pay off these deficits for 1946 and 1947. You are no doubt aware of the fact that under the County Budget Act and Constitution of this state, the financial statutes of counties is presumed to be upon a cash basis and said counties should not incur additional obligations over and above the anticipated revenue for any one year. (See Sections 10910 to 10917, inclusive, R.S. Mo. 1939, and amendments thereto; also Section 26 (a) of Article VI, Constitution of 1945.) Since the foregoing laws and constitutional provisions hereinabove referred to were in effect during 1946 and 1947, the question may be raised as to whether the additional tax referred to in your request could be voted for the specific purpose of satisfying the indebtedness for 1946 and 1947. In Missouri Toncan Culvert Co. vs. Butler

County, 181 S.W. (2d) 506, l.c. 507, 352 Mo. 1184, the court held that the constitutional provision that no county may become indebted to an amount exceeding in any year revenue provided therefor without consent of two-thirds of the voters can not be circumvented by postponement of payment of the debt until the following year. In so holding, the court said:

"The evidence established that the anticipated revenue of Butler county for road and bridge purposes for 1940 was less than \$31,000; and that warrants were issued against said fund during said year in excess of \$70,000; the total amount issued as of November 1, 1940, being in excess of twice the aggregate anticipated revenue for said purpose for 1940. The testimony discloses that County Judges Githens and Smith were aware of the fact the county was out of funds, did not have the money to pay, and conceived the idea of putting off payment until thirty days after shipment. Constitutional safeguards for the protection of the people's money are not to be circumvented in such manner. They were enacted for a wholesome purpose and should be strictly enforced. All are bound to take notice of such safeguards. While this constitutional provision impliedly authorizes the fiscal agents to anticipate the revenue of the current year in the administration of the county's affairs, it explicitly forbids the anticipation of revenues for any future year, a forbidden act which the named fiscal agents admittedly sought to override. *Trask v. Livingston County*, 210 Mo. 582, 594, 600, 109 S.W. 656, 659, 660, 37 L.R.A. 1045; *Ebert v. Jackson County*, Mo.Sup., 70 S.W. 2d 918, 919 (2); *Hawkins v. Cox*, 334 Mo. 640, 648 (3), 66 S.W.2d 539, 543 (3-5). These and other cases recognize and enforce the constitutional intent to abolish the credit system and to put counties and other political subdivisions on a cash basis by limiting the legal expenditures of any given year to the income and revenue of that year in the absence of some special authorization."

In *Missouri-Kansas Chemical Co. vs. Christian County*, 180 S.W. (2d) 735, l.c. 736, the plaintiff sued the county to

recover for soap and disinfectant sold the county, and recovered judgment amounting only to part of that sought to recover. Apparently what was recovered was the amount available in the budget for such purchases. The court, in holding that any payment ordered by the county when there was no balance budgeted with which to make the payment is void, said:

"The chemical company contends it is entitled to judgment for the full amount because the county budget law does not affect its transactions with Christian County. That county is one of less than 50,000 inhabitants. Only Sections 10910 to 10917, inclusive, R.S. 1939, Mo. R.S.A., of the budget law apply to such counties. It claims that Section 10932 which invalidates contracts made in violation of the county budget law does not apply to counties of this class.

"The same contention was raised in Missouri-Kansas Chemical Corporation v. New Madrid County, 345 Mo. 1167, 139 S.W. 2d 457. There we hold that any payment ordered by the county court of a county of less than 50,000 inhabitants, when there was no balance budgeted with which to make payment, would be void under the provisions of Section 10917 applicable to such county. Therefore, it was of no consequence whether Section 10932 was applicable or not."

Also in Missouri-Kansas Chemical Company vs. New Madrid County, 139 S.W. (2d) 457, l.c. 458, the court held that absent exceptional circumstances, a sheriff's authority to obligate his county is restricted to his budget allowances and that a company furnishing supplies could not recover for items purchased in excess of budget allowances. (See also State vs. Palmer, 194 S.W. 10, l.c. 11.)

If said deficits for 1946 and 1947 represent expenditures that were lawful and properly budgeted and were within the anticipated revenue for that year, then we are inclined to believe that the additional tax levy of fifteen cents could be assessed and levied for the purpose of paying said deficits if two-thirds of the qualified electors voting thereon vote for said additional tax.

CONCLUSION

It is the opinion of this department that since your county has assessed and levied the maximum allowed under the law for county purposes, the only procedure for increasing the tax rate for such purposes is to submit the matter to the qualified electors of said county. Such tax may be increased for a period not to exceed four years, if two-thirds of the qualified electors voting thereon shall vote for increased tax, provided that such expenditures resulting in said deficits for 1946 and 1947 were properly budgeted and came within the anticipated revenue for that year.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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