DRAINAGE DISTRICTS:

LEVYING OF ADDITIONAL TAXES:

County courts may levy additional taxes to pay claims against the district, provided a total of all levies against the district does not exceed the total amount of benefits assessed.

January 28, 1947

FILED
84

3/27

Honorable Edward W. Speiser
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Sir:

This is in reply to your letter of January 18, 1947, in which you request an official opinion from this department on the following statement of facts:

> "About three years ago the Bee Branch Drainage District was organized in Chariton County, pursuant to the authority contained in Chapter 79, Article 3, commencing with Section No. 12398 of the Missouri Revised Statutes Annotated.
>
> "Thereupon in strict accordance with the procedure outlined in Article 3, the contract for the work was duly let and thereafter completed. The construction of the drainage ditch was duly accepted and confirmed by the County Court. It appears that there was not sufficient money available from taxes levied to pay the contractor in full, and they still owe him the amount of $700.00. The contractor has complied in every way with the provisions of the contract, and undoubtedly is entitled to this balance due him. The County Court desires to pay him this money, but are hesitant concerning the proper procedure for raising the money with which to make the payment. Bonds were issued in this case and have all been sold, and the proceeds of the bonds and taxes levied have been spent.
>
> "The County Court has instructed me to request an opinion from you as to whether or not under the circumstances stated, they have the authority and power to levy

> an additional tax in accordance with the provisions set forth in Section 12413 of said Article 3, or possibly under some other authority. They are hesitant about proceeding unless they have an opinion from your office concerning the authority to do so. It is my opinion that they have this authority in view of said Section 12413, and also in view of the holding of the Court in Charidon vs. Fleming, 93 Missouri 321."

Section 12413, R. S. Mo. 1939, to which you refer in your letter, seems to be the authority for county courts to levy taxes for the construction of drainage districts. This section reads as follows:

> "The list and schedule specified in section 12412 shall be prepared in the form of a well-bound book which shall be named and indorsed 'drainage tax record of drainage district number of county, Missouri,' which indorsement shall also be printed or written at the top of each page in said book and the same shall be signed by the county clerk, attested by the seal of the county court and shall hereafter remain a permanent record in the office of said clerk. In case the proceeds of the taxes levied as herein provided are not sufficient to construct the improvements as described in the report of the viewers and engineer as confirmed by the court, then the court shall make, certify and provide for the collection of such additional tax levies as are necessary to complete the improvement: Provided, however, that the aggregate of all such levies, exclusive of taxes levied for interest on bonds, does not exceed the total benefits assessed and confirmed. If any sum be needed to pay any judgment against the district and upon the filing of a certified copy of said judgment with the clerk of the county court, it shall be the duty of the county court, at the next term, to levy sufficient taxes to pay the same and to add thereto sufficient taxes to pay the interest on said judgment. The court shall levy, certify and provide for the collection of said taxes as hereinbefore provided and shall apportion

> the same to the lands or other property in proportion to the original assessment of benefits, but not in excess thereof, and if in excess thereof then in such proportion as will not, with other lawful tax levies, made and collected be in excess of the benefits reported by the viewers and confirmed by the court."

The only limitation in this section seems to be that the aggregate of all such levies, exclusive of taxes levied for interest on bonds, does not exceed the total benefits assessed and confirmed. I believe this question has been answered a number of times by the Supreme Court, and one of the latest cases that we find wherein it was under discussion is the case of State ex rel. Ross v. General American Life Insurance Company, 85 S.W. (2d) 68, l.c. 75. The court, in discussing this question, referred to two other cases, namely, State ex rel. D. D. No. 8 of Pemiscot County v. Duncan, 68 S.W. (2d) 679, and State ex rel. Sturdivant Bank v. Little River D. D., 68 S.W. (2d) 671; and in connection with this discussion, the court said:

> " * * * In both of these cases the court had occasion to say that under section 10759, R. S. 1929 (now Section 12340, R. S. Mo. 1939), and under the laws of Missouri drainage districts have no inexhaustible power to tax but are restricted to the amount of benefits assessed, and said section so provides. * * * "

Said Section 12340, R. S. Mo. 1939, relates to drainage districts organized by circuit courts. Section 12413, R. S. Mo. 1939, contains similar provisions, and it relates to drainage districts constructed and improved by county courts. In both of these sections, it will be found that the total benefits assessed and confirmed is the maximum amount to which courts may go in levying taxes. In the case of State ex rel. Sturdivant Bank v. Little River D. D., 68 S.W. (2d) 671, l.c. 673, the court made the following statement relative to this question:

> "* * * Under sections 10757 and 10781 (Mo. St. Ann. Sections 10757, 10781, pp. 3484, 3506), if the estimated cost of construction exceeds the total assessed benefits allowed by the court the improvement cannot be made and the district must be dissolved. The act does not provide for new

> or supplemental benefit assessments thereafter except, on certain conditions, under section 10790 (Mo. St. Ann. Section 10790, p. 3518), for maintenance purposes; or where, because of a change in boundaries or for other reasons, the plan for reclamation is changed. See sections 10784, 10786, 10793 (Mo. St. Ann. Sections 10784, 10786, 10793, pp. 3508, 3512, 3520). In other words, the mere fact that the total benefit assessment proves inadequate to finance the cost of construction or to pay bonds issued for that purpose will not authorize an increase in the assessment.
>
> "Section 10759 (Mo. St. Ann. Section 10759, p. 3486) requires a total or aggregate tax to be levied on all the land in the district, without unnecessary delay, of such portion of said assessed benefits as the board of supervisors shall find necessary to pay the cost of constructing the proposed drainage works and improvements, plus 10 per cent. for emergencies. See Elsberry Drainage Dist. v. Winkelmeyer, 278 Mo. 268, 275, 212 S.W. 893, 895. This tax is apportioned to the various tracts of land in the district according to the benefits charged to each, and cannot exceed the assessed benefits. Section 10760 (Mo. St. Ann. Section 10760, p. 3488) directs that the board of supervisors 'shall each year thereafter determine, order and levy the amount of the annual installment of the total taxes levied under the preceding section.' Under section 10793 (Mo. St. Ann. Section 10793, p. 3520), if the initial total tax levy made pursuant to section 10759 is found to be insufficient to pay the cost of constructing the drainage improvement contemplated by the plan for reclamation, additional levies may be made for that purpose, 'provided, the total of all levies of such tax does not exceed the total amount of benefits assessed.'"

We think the language of the foregoing statute and the rulings of the court relating to this question clearly demonstrate that the county court may levy additional taxes necessary to complete the improvement, provided that the aggregate

of all levies, exclusive of taxes levied for interest on bonds, does not exceed the total benefits assessed and confirmed.

However, from a reading of said Section 12413, one might be in doubt as to whether the provisions of that section, following the part which provides a method for paying judgments, was limited to paying judgments or whether it was meant to include any excess cost of the drainage district over the estimated cost. The section provides a method for paying judgments if the claim for doing the drainage work is unpaid and has been reduced to judgment. The statute reads: "Upon the filing of a certified copy of said judgment * * * it shall be the duty of the county court * * * to levy sufficient taxes to pay the same * * * * "

"The court shall levy, certify and provide for the collection of said taxes as hereinbefore provided and shall apportion the same to the lands or other property in proportion to the original assessment of benefits, but not in excess thereof, * * *" By using the above term, "as hereinbefore provided," it is clear that reference is had to all the provisions of the section that precede the words "as hereinbefore provided." It would seem, therefore, to follow that the section means that the county court shall follow the procedure set forth by the statute as it appears in that part thereof before the words "as hereinbefore provided." This is true regardless of whether it is to raise the additional money to pay a judgment or to pay drainage expenses that have not been reduced to judgment.

The statute then provides that the additional taxes so raised shall be apportioned to the property in proportion to the original assessment. It says: "The court * * * shall apportion the same to the lands or other property in proportion to the original assessment of benefits." If it referred to paying off in that way only those drainage expenses that had been reduced to judgment, it would have so stated. The words used are inconsistent with the limitation to pay only that part of the excess expenses that have been reduced to judgment.

If the cost of the construction is more than the estimated cost, the statute permits the court to make the levy to meet it, provided that such additional levy coupled with other lawful tax levies are not "in excess of the benefits reported by the reviewers and confirmed by the court."

CONCLUSION

It is therefore the opinion of this department that the county court may levy a tax, in addition to the tax necessary to retire the bonds issued for the improvement of a drainage district, provided it is necessary to make such levies, and providing that the aggregate of all the levies against the district, exclusive of taxes levied for interest on the bonds, does not exceed the total benefits assessed and confirmed.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM