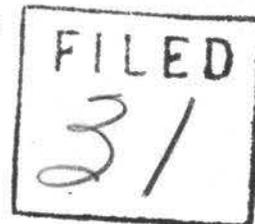


TAXATION: Counties may not exact a gasoline tax in the absence
of specific legislation authorizing same.
COUNTIES:



November 17, 1948

Honorable W. C. Frank
Prosecuting Attorney
Adair County
Kirksville, Missouri

11-17

Dear Sir:

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

"On November 19, the County Judges of the sixteen counties comprising the First Congressional District, are going to hold a meeting in the Court House here in Kirksville, for the purpose of discussing the possibility of the several counties calling an election and voting a gasoline tax for road purposes.

"The Adair County Court asked me to write you for an official opinion advising them whether or not the several counties could so vote such tax and if so, how much the tax could be voted for.

"If you can favor them with this opinion, it will be greatly appreciated."

The law is well established in this state that a county can only exercise the taxing power when authorized to do so by an act of the Legislature. Article X, Section 1, Constitution of Missouri 1945, reads:

"The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes."

Article X, Section 4(a), of the Constitution of Missouri 1945, places all property within three classifications, and concludes that nothing in said section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or other taxes of the same or different types, and reads:

"All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The general assembly, by general law, may provide for further classification within Classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types."

Furthermore, Section 11(f), Article X, Constitution of Missouri 1945, provides that nothing in this Constitution shall prevent any general law permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes, and reads:

"Nothing in this Constitution shall prevent the enactment of any general law permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes."

The two above constitutional amendments clearly indicate that counties may exact a gasoline tax, providing legislation implementing said constitutional provision is enacted by the general assembly, and only in such case may such taxes be collected by the county.

Apparently you have in mind several counties joining together under Section 16, Article VI, of the Constitution of Missouri 1945, which reads:

"Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Furthermore, the 63rd General Assembly enacted legislation which will permit municipalities and political subdivisions of the state to exercise authority granted under and by virtue of Section 16, Article VI, supra. (See page 1395, Laws of Missouri 1945.) However, notwithstanding the adoption of Section 16, Article VI, supra, and enactment of legislation passed by the 63rd General Assembly, page 1395, Laws of Missouri 1945, it is still essential that there be a specific act of the Legislature authorizing counties to exact a gasoline tax in their respective counties, and we fail to find wherein such legislation has ever been enacted.

CONCLUSION

Therefore, we must conclude that, in the absence of specific legislation authorizing counties to collect gasoline taxes, it cannot be done.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General *JTB*

ARR:LR