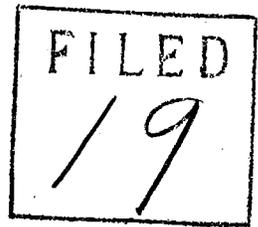


TAX LEVY: An increase in the levy above the constitutional and statutory limit of taxes for public health purposes would be unconstitutional, when such levy is ordered by the circuit court.



November 14, 1946

11/25

Mr. J. V. Conran
Prosecuting Attorney
New Madrid County
New Madrid, Missouri

Dear Sir:

This acknowledges receipt of your request for an opinion based on the following facts:

"Our County Court has made a levy of 50¢ on the \$100.00 assessed valuation for general revenue purposes in this county, and we understand that to be the limit allowed under the new constitution, the same as it was under the old constitution.

"Now the County Court seems to desire that an additional levy be made for public health purposes; specifically to aid the DDT spraying program for the year 1947. This project has proven very beneficial to this part of the state.

"We notice that the new constitution provided for such a levy in addition to the limitation of 50¢ on the \$100.00 assessed valuation, provided the legislature passes a law for such purposes, and we observe that the legislature has now enacted sections 11040 and 11041 of the Laws for the year 1945, which would seem to relate to this subject matter.

"However we note that in section 11040 mention is made that the tax levies mentioned therein shall include those for public health and etc. The point that has us worried is whether or not this would make it

necessary to include such a levy with the others made for general revenue purposes and limit the total to 50¢ on the \$100.00 assessed valuation. In other words, the thing we desire to know is whether under the existing state of the law, our County Court can levy a tax in excess of the 50¢ on the \$100.00 assessed valuation for public health purposes by following the procedure outlined in section 11041 of the 1945 statutes."

Section 11(b) of Article X of the 1945 Constitution provides:

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

* * * * *

"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; * * * * "

New Madrid County has an assessed valuation of less than three hundred million dollars, hence the fifty cent maximum would be applicable.

The New Madrid County Court, having made the maximum levy allowed by the Constitution of 1945, would be precluded from making an additional levy unless authority for such is contained in the Constitution.

Section 11(c) of Article X of the 1945 Constitution provides for an additional levy for certain purposes by specific methods and under certain circumstances, and is as follows:

"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."

(Emphasis ours.)

Other than by a two-third vote of the people, the underlined portion of this section of the Constitution authorizes an increase in levy only when authorized by law and then only for library, hospital, public health, recreation grounds and museum purposes.

The question then arises as to whether the Legislature, pursuant to this constitutional provision, authorized any such increase in the levy. Dealing with the taxes to be assessed, levied and collected, the General Assembly enacted Section 11040, Mo. R.S.A. 1939, House Committee Substitute for House Bill No. 468, Section 1, which is as follows:

"The following named taxes shall hereafter be assessed, levied and collected in the several counties in this state, and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state, viz.: The state tax and taxes necessary to pay the funded or bonded debt of the state, county, township, municipality, road district, or school district, the taxes for current expenditures for counties, townships, municipalities, road district and school district, including taxes which may be levied for library, hospitals, public health, recreation grounds and museum purposes, as authorized by law."

This section expressly provides that the levy made includes expenses for public health, etc., and precludes, rather

than authorizes, an additional levy for such items, and unless other statutes could be found directly authorizing an increase above the maximum set by the Constitution and by this statute for such purposes as public health, an additional levy would be unconstitutional.

Then follows Section 11041, Mo. R.S.A., House Committee Substitute for House Bill No. 468, Section 1, which is the only statute we are able to find providing for an additional levy above the constitutional and statutory limitations. Said section is as follows:

"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."

(Emphasis ours.)

The underlined parts of this section clearly show that an additional levy, as authorized therein, must be for taxes and purposes other than those specified in Section 11040, Mo. R.S.A., which is the preceding section and in which public health is specified and included.

Conclusion.

It is therefore the opinion of this department that an additional levy of tax ordered by the circuit court, above the fifty cent maximum set by the Constitution and statute, for the purpose of public health would be unconstitutional.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WBD:ml