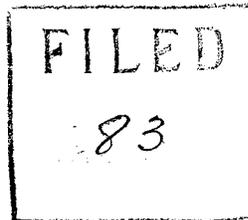


CONSTITUTIONAL LAW: The words "new construction and im-
HANCOCK AMENDMENT: provements", as used in Article X,
PROPERTY TAX: Section 22(a), Missouri Constitu-
REASSESSMENT: tion, mean betterments to real
TAX LEVY: property, including the creation
TAXATION-TAX RATE: of new structures and additions
 to, replacements of, or remodeling
of existing structures, that occur subsequent to the last annual
assessment date for such property; the county clerks and the
assessor in the City of St. Louis determine when a rollback in tax
rate is required by Article X, Section 22(a), Missouri Constitu-
tion.

September 22, 1983

OPINION NO. 83-83

Dr. Arthur L. Mallory
Commissioner of Education
Jefferson State Office Building
Jefferson City, Missouri 65105



Dear Dr. Mallory:

This official opinion is issued in response to the following questions:

1. What constitutes "new construction and improvements" as that phrase is used in Article X, Section 22(a) of the Missouri Constitution?
2. Who determines when a rollback in tax rate is required as a result of Article X, Section 22(a)?
3. On what basis is a determination made that the assessed valuation of property as finally equalized, **excluding the value of new construction and improvements**, increases by a larger percentage than the increase in the general price level from the previous year? [Emphasis in original.]

Dr. Arthur L. Mallory

Article X, Section 22(a), Missouri Constitution, states in pertinent part:

If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

Your first question asks the meaning of the phrase "new construction and improvements", as used in the Constitution. We believe that the word **new** modifies both the word **construction** and the word **improvements**. We note that the annual assessment date of property in Missouri is January first of each year. Section 137.080, RSMo 1978. Although the annual assessment requirement has not been enforced (see, e.g., **State ex rel. Cassilly v. Riney**, 576 S.W.2d 325 (Mo. banc 1979); Section 137.750.1, RSMo Supp. 1982), we believe that, under the law, **new** construction and improvements occur subsequent to each annual assessment date.

In dealing with this question, we must utilize the accepted principle for construing constitutional provisions reaffirmed by the Supreme Court of Missouri in **Roberts v. McNary**, 636 S.W.2d 332, 335 (Mo. banc 1982). That is, the meanings to be ascribed to words used in the Hancock Amendment are the ordinary and commonly understood meanings derived from the dictionary. Turning to the dictionary, we find the following definition of the word **improvement**:

[A] permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs . . . Webster's Third New International Dictionary 1138 (unabridged edition 1981).

The word **construction** finds its root in the word **construct** which is defined in part as: "[T]o form, make, or create by combining parts or elements: . . ." *Id.*, at 489.

Dr. Arthur L. Mallory

Thus, we conclude that the words "new construction and improvements", as used in Article X, Section 22(a), Missouri Constitution, mean betterments to real property, including the creation of new structures, and additions to, replacements of, or remodeling of existing structures, that occur subsequent to the last annual assessment date for such property.^{1/}

Your second question asks who determines when a rollback in tax rate is required as a result of Article X, Section 22(a). Although the Constitution is silent on this question, it specifically states that the levy applied in each county or other political subdivision must be reduced to keep property tax revenues at existing levels, with an adjustment for changes in the general price level permitted. Since the levy adjustment is to be made by local authorities, we believe the determination as to when a rollback is required must also be made by local authorities. Presumably, such a determination will be made in a manner similar to that required by Section 137.073.2, RSMo Supp. 1982. That is, the county clerk in the counties and the assessor of City of St. Louis will notify all taxing authorities within the relevant taxing area that a rollback is necessary on the basis of information indicating that the rollback is required by law. See Opinion No. 46-83.

Your third question asks about the basis for a determination that a rollback under Article X, Section 22(a), is necessary. As we have stated, a rollback is required when the assessed valuation of property, as finally equalized but excluding the value of new

^{1/}This statement does not contravene the relevant comments in the memorandum dated October 1, 1980, from the Taxpayers' Survival Association, captioned DRAFTERS' NOTES - TAX LIMITATION AMENDMENT, at page 10, to wit:

"The value of new construction and improvements" clearly means only new physical construction. Any increase in value because of zoning changes or for any other reason are not within the meaning of "new construction and improvements." New construction is intended to mean the amount of newly construction [sic] property less losses. Failure to adjust for losses would allow taxes on existing property to increase faster than inflation which is clearly contrary to the intent of this section.

Of course, the intent of the drafters is not controlling. *Boone County Court v. State*, 631 S.W.2d 321, 324 n.2 (Mo. banc 1982).

Dr. Arthur L. Mallory

construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year.

Two comparisons are necessary. First, the total assessed valuation of all property in the county from the previous year must be compared to the total assessed valuation of all property for the current year, as finally equalized by the State Tax Commission excluding the value of new construction and improvements. Section 137.115, RSMo Supp. 1982, requires the assessor in all counties and the City of St. Louis to list and value all real and tangible personal property within their jurisdiction. See, Sections 137.245, 137.375, 137.515, RSMo 1978. In addition to the review by the various county boards of equalization, the State Tax Commission must annually equalize the value of property in all of the counties and the City of St. Louis. Section 138.390, RSMo 1978. Notice of the equalized values is to be provided annually to the county clerks and the assessor in the City of St. Louis. Section 138.400, RSMo 1978.

If the assessors have prepared the tax books in such a manner as to show the value attributed to new construction and improvements, if any, on each parcel, which we believe they are required to do under the terms and conditions of this constitutional provision, the total value of the current assessments in each county and in the City of St. Louis, as equalized by the State Tax Commission in the current year, less the value of new improvements and construction, can be easily compared with the total assessed value of property from the previous year, and the percentage of increase noted. It remains only to compare this percentage to the percentage increase in the general price level from the previous year.

The term "general price level" is defined in Article X, Section 17(3), Missouri Constitution, as the Consumer Price Index for All Urban Consumers for the United States as defined and officially reported by the United States Department of Labor. The Consumer Price Index for All Urban Consumers is published monthly by the Bureau of Labor Statistics, United States Department of Labor. It is an index, with 1967 as its base year (1967 = 100), which is used to measure price changes in a fixed "market basket" of goods and services. The "market basket" is designed to reflect the actual purchases of goods and services by the average urban consumer. Since the annual assessment date in Missouri is January first of each year (Section 137.080, RSMo 1978), it would appear that the percentage of increase in assessed valuation from the previous year should be compared to the percentage of change in the Consumer Price Index during the same period. The latter percentage can be obtained by comparing the index published at the beginning of the previous year to the index published at the end of the previous year. When the percentage increase of the

Dr. Arthur L. Mallory

assessed valuation is greater than the percentage increase of the general price level, a rollback of tax levies is required by Article X, Section 22(a), Missouri Constitution.

CONCLUSION

It is the opinion of this office that:

(1) The words "new construction and improvements", as used in Article X, Section 22(a), Missouri Constitution, mean betterments to real property, including the creation of new structures and additions to, replacements of, or remodeling of existing structures, that occur subsequent to the last annual assessment date for such property, and that (2) the county clerks and the assessor in the City of St. Louis determine when a rollback in tax rate is required by Article X, Section 22(a), Missouri Constitution.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", written in a cursive style.

JOHN ASHCROFT
Attorney General