

ROADS AND BRIDGES: Taxation, Sections 10 and 23 of Art. 10  
of the Constitution construed and applied.

7890. 91 RS Mo 1729

May 12, 1933



Honorable Elliott M. Dampf  
Prosecuting Attorney  
Cole County  
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your letter of May 2nd, 1933,  
which is as follows:

"Will you kindly give me your opinion as to whether the County of Cole, having a property valuation of \$18,000,000.00, can levy a revenue tax in the sum of Fifty Cents (\$0.50) on the Hundred Dollar valuation under Section 11, of Article 10, of the Constitution of Missouri and an addition tax under Section 23, of Article 10, not to exceed Twenty-five Cents (\$0.25) on the Hundred Dollar valuation, for road and bridge purposes only."

Section 11 of Article 10 of the Constitution of Missouri, in part pertinent to your inquiry, provides as follows:

"Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. \* \* \* in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; \* \* \*"

Section 23 of Article 10 of the Constitution of Missouri provides as follows:

"In addition to taxes authorized to be levied for county purposes under and by virtue of section 11, article X of the Constitution of this State, the county

court in the several counties of this State not under township organization, and the township board of directors in the several counties under township organization, may, in their discretion, levy and collect, in the same manner as State and county taxes are collected, a special tax not exceeding twenty-five cents on each \$100 valuation, to be used for road and bridge purposes, but for no other purpose whatever; and the power hereby given said county courts and township boards is declared to be a discretionary power."

Section 7890 R. S. No. 1929, reads as follows:

"The county courts in the several counties of this state, having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the "county road and bridge fund."

Section 7891 R. S. No. 1929, reads in part as follows:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: - - - "

The Supreme Court in construing the above sections with the constitutional provisions supra, in the case of State ex rel. and to Use of Covington County Collector, v. Wabash Ry. Co., 3 S. W. (2) l.c. 380, used the following language:

" \* \* \* We are clearly of the opinion that the tax levy required by section 10682 (Sec. 7890 R. S. Mo. 1929) is not a special or additional levy within the meaning of section 22, art. 10, of the Constitution. It has been several times held that a road tax levy under section 10682 is governed by section 11, art. 10. (Citing many cases). \* \* \* "

And further:

" \* \* \* There are intimations to the contrary in State ex rel. A., T. & S. F. Ry. Co., 310 Mo. 587, 600, 275 S. W. 932, but that case was overruled by State ex rel. v. Pemiscot Land & Cooperage Co., supra (295 S. W. l.c. 81). \* \* \* "

And further:

"Section 10683 refers to the same road tax that was dealt with by Section 9436, R. S. Mo. 1899, before section 22, art 10 of the Constitution was adopted. Section 10683 (Sec. 7891 R. S. Mo. 1929) is the one that provides for road taxes under section 23, art 10, of the Constitution. It authorizes a special or additional levy up to the full 25 cent maximum set by that section of the Constitution, and pre-empts the whole of that field. The application of the two statutes (section 10682 and section 10683) is this: Under the former a road tax of not exceeding 30 cents on the \$100 valuation must be levied as a part of the general tax levy of the county within section 11, art 10, of the Constitution; and if additional road revenues are necessary, the county court may, in its discretion, levy an additional road tax up to 25 cents on the \$100 valuation under section 10683 and section 22, art. 10, of the Constitution."

And further on page 381:

"It is clearly within the right and authority of the General Assembly to pass laws authorizing counties to exercise the taxing power subject to limitations more confining than those set by the Constitution itself, except in instances where the Constitution gives the taxing authorities an uncontrolled discretion, as was done by section 23 of article 10."

In the case of State ex rel. and to Use of Kersey, Collector of Revenue, v. Pemiscot Land & Cooperage Co., 295 S. W. 1.c. 81, the Supreme Court in Banc, said:

"The rate fixed for county purposes in counties having \$10,000,000 and not exceeding \$30,000,000 is 50 cents on the \$100 valuation; hence only 30 cents on the \$100 valuation is left for other general county purposes. It is not likely the Legislature could, in fairness to other demands for county purposes, fix the maximum rate for road purposes higher than 20 cents on the \$100 valuation. Again, if a higher rate was fixed it would apply to all counties in the state, and many of these counties would not need the amount of money realized from a higher rate of taxation. Therefore we conclude that the power granted to the county courts of this state by section 23 of article 10 of the Constitution to levy and collect, in their discretion, a special tax not to exceed 25 cents on the \$100 valuation for road and bridge purposes, is a power to be used in emergencies, as in the judgment of the court an emergency exists, and that this power was lodged by the organic law with the county courts that these emergencies might be speedily taken care of. The fact that the fund realized from a levy under section 23 of article 10 of the Constitution is for county purposes is not controlling or even persuasive. Certainly, it cannot be classified under general county purposes, for this classification is fixed by law (section 13866 R. S. 1919) (Sec. 9874 R. S. Mo. 1929); and the Constitution classifies it as

a special road and bridge tax.

It will be noted that the provision limiting the tax levy for county purposes to 10 per cent. in excess of the amount produced by the rate of levy for the previous year, is made a part of the statute limiting the amount of the annual tax for county purposes, which statute is authorized by section 11 of article 10 of the Constitution. \* \* \*

And further:

\* \* \* \* Having in mind the express grant of power to the county courts in section 23 of article 10 of the Constitution, and the evident purpose of the organic law in lodging this power in said courts, we hold that section 12865 (sec. 9873 R. S. Mo. 1929) as amended by the Laws of 1921 and 1923 (Laws of Missouri 1921, p. 678, now Laws of 1923, p. 374), is unconstitutional and void in so far as it may have been intended by the Legislature to limit the power granted to the county courts in section 23 of article 10 of the state Constitution. In so holding we do not assume the Legislature intended to limit the power granted to the county courts in said section of the Constitution. We think the Legislature only intended, by section 12865, as amended by the laws of 1921 and 1923, to limit rates of tax levy for county purposes which it controlled by statutes fixing said rates. It follows that the county court of Pemisoot county could legally exclude the special road and bridge tax for 1925 in determining whether it was within the law requiring that the tax levy for 1925 should not be increased more than 10 per cent. of the amount collected for taxes for 1924. This conclusion disposes of the other assignment of error.

The case of State ex rel. v. Railroad, 310 Mo. 587, 375 S. W. 932, should be overruled, \* \* \* \*

Hon. Elliott M. Dampf.

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It is therefore our opinion that the county court may levy a revenue tax in the sum of 50¢ on the \$100 valuation under Section 11 of art. 10, and an additional tax under section 22 of art. 10, not to exceed 25¢ on the \$100 valuation, same to be used for road and bridge purposes only and not for any other purpose.

Yours very truly,

JAMES L. HORNOSTEL,  
Assistant Attorney General.

APPROVED \_\_\_\_\_  
Attorney General.

J.H:NM