

COUNTY COURT: Amount of levies for county purposes and road funds discretionary; 10% limitation under Section 9873, R. S. 1929, applies to road tax.

8-30

August 29, 1934.



Hon. S. P. Dalton  
Prosecuting Attorney  
Cape Girardeau County  
Cape Girardeau, Missouri

Dear Mr. Dalton:

We are in receipt of your recent letter with a request for an opinion, which letter is as follows:

"I would like to have your opinion on the following proposition.

This county now levies a tax of 34¢ on the \$100.00 valuation under Section 9873 R. S. Mo. 1929, for county purposes and 14¢ on the \$100.00 valuation under Section 7890 R. S. Mo. 1929, for road purposes and 10¢ on the \$100.00 valuation under Section 7891 R. S. Mo. 1929, as a special road tax.

In this county a large part of the valuation of the county lies in special road districts and under the ruling of the Supreme Court in the case of State ex rel vs. Holman, 264 S. W. 908, 305 Mo. 195, the special road districts are entitled to the money collected under the last two levies from property within their respective districts.

Section 9874, R. S. Mo. 1929, (now Amended Laws, 1933, page 351) provides for the county court to appropriate and subdivide the revenues collected for the various purposes, including provision for roads and bridges, but with

the special road district taking most of the money, the amount for general use over the larger territory of the county is more or less limited.

What we would like to know is whether or not the county court by decreasing the amount of the levy for road purposes under Section 7890 and increasing the amount for general county purposes under Section 9873, may legally deprive the special road districts of the county of part of the taxes which they are now getting from the road tax and special road tax as collected in their respective districts, and place such funds under the control of the county court where it may be appropriated for road purposes generally in the entire county and under the direction of the county court.

In other words, can the county court by reducing the amount of the levy under Section 7890 and increasing the amount of the levy under Section 9873 so that the total levy is the same, deprive the special road districts of that much of the tax money and leave the funds available for the county court to appropriate same for road purposes so that they may be available for roads in any portion of the county, and leave such funds under the control of the county court under Section 7894 (should be 9874) R. S. Mo. 1929?

I would like also to have your opinion on the proposition as to whether or not the limitation as to 'ten per cent' increase on levy over the previous year, as provided in Section 9873, would apply in such case to the increased levy under Section 9873 or only to the total levy under both sections, which would remain the same if the decrease under one section was equal to the increase under the other."

We are herewith setting forth the statutes which are applicable to the questions submitted in your request for an opinion.

Section 7890, R. S. Mo. 1929, provides 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 9873, R. S. Mo. 1929, provides as follows:

"For county purposes the annual tax on property not including taxes for the payment of valid bonded indebtedness or renewal bonds issued in lieu thereof shall not in any county in this state exceed the rates herein specified: In counties having six million dollars or less said rate shall not exceed fifty cents on the one hundred dollars valuation; in counties having over six million dollars and less than ten million dollars said rate shall not exceed forty cents on the one hundred dollars valuation; in counties having ten million dollars and not exceeding thirty million dollars said rate shall not exceed fifty cents on the one hundred dollars valuation, and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the one hundred dollars valuation. The foregoing are maximum rates which may be levied in said counties. Provided, however, the county court shall not have power to order a rate of tax levy on real or personal property for the year 1921 which shall

produce more than ten per cent in excess of the amount produced mathematically, by the rate of levy ordered in 1920, and in no subsequent year may any county court or any officer or officers acting therefor, order a rate of tax levy that will produce mathematically more than ten per cent in excess of the taxes levied for the previous year. Provided further, that the qualified voters of any county, by a majority vote shall have power to fix any additional rate higher than above provided for within the limits prescribed by the Constitution at a general election or a special election called for that purpose. County courts are hereby empowered to call and conduct a special election under the laws governing such elections, as herein contemplated, or submit a proposition for increase of levy, when in the opinion of such court necessity therefor arises, and shall submit any such proposition at either special or regular election when petitioned therefor by taxpaying citizens equaling in number one per cent or more of the qualified voters of the county, and the proposition shall be as follows on the ballot: 'For a levy for county purposes of . . . . . on the hundred dollars valuation'--and--'against a levy for county purposes of . . . . . on the hundred dollars valuation,' provided, that the limitations contained in lines fourteen to twenty-one herein shall not apply to any county containing or which shall hereafter contain not less than twelve thousand inhabitants nor more than sixteen thousand inhabitants and in which any part of the courthouse therein may have been or shall be destroyed or damaged by fire or other cause when it shall become necessary to make a higher levy for the purpose of restoring or replacing such destroyed parts or altering or repairing such courthouse or to preserve same or any part thereof from

waste or damage. And in all such cases the county court shall make an estimate of the sum necessary to be raised therefor for the current year and may levy such additional rate of tax within the limits of the Constitution as will mathematically produce such sum. All taxes collected under such additional levy shall be placed in a fund to be known as the 'courthouse fund' and no part of such fund shall be diverted or used for any other purpose than the purposes aforesaid."

I.

The statute places upon the county court the duty of ascertaining the necessary levies to be made for "county purposes" under Section 9873, supra, and the amount of the levy under Section 7890, supra, and the amount of these levies is discretionary with the county court based on their knowledge of the conditions and need for revenue for the various purposes. This power of levying taxes has been lodged in the county court and so long as the levies do not exceed the constitutional limits they cannot be disturbed except where there has been a clear abuse of this discretionary power.

In the case of State ex rel. Johnson v. St. Louis & S. F. R. Co., 10 S. W. (2d) 918, 1. c. 921, the Supreme Court had this to say on the question:

"The power to levy a tax for county purposes is a power delegated to the county court, is legislative in character, and in the exercise of that power the county court has a large discretion. All of the cases so hold. Decker v. Diemer, 229 Mo. 296, 129 S. W. 936; State ex rel. Johnson v. St. Louis-San Francisco Railway, 315 Mo. 430, 286 S. W. 360; People v. C. & A. Ry. Co., 289 Ill. 282, 124 N. E. 658; People v. Sandberg Co., 277 Ill. 567, 115 N. E. 741; People ex rel. Bear v. Illinois Central R. R. Co. 266 Ill. 126, 107 N. E. 223; Cooley, Taxation (4th Ed.) Sections 1031, 1032. The authorities cited for appellant, and others, are to the effect that courts rarely interfere with the exercise of this discretionary power, and do so only when there is clear evidence of an abuse of discretion."

It is our opinion that the county court may raise or lower the levies under Section 9873, supra, for county purposes and the levy for road taxes under Section 7890, supra, as the exigencies of the case may demand, subject only to the limits fixed by the Constitution and where the levies do not clearly abuse their discretionary power.

## II.

As to the question asked in the last paragraph of your letter of request, it is answered in the case of *State ex rel. Covington v. Wabash Ry. Co.*, 3 S. W. (2d) 378, in which the court said (l. c. 379):

"Now a levy for road purposes under section 10682, R. S. Mo. 1919, as amended by Laws Mo. 1921 (Extra Session), p. 172, is one which a county court may make on its own initiative without invoking outside aid, consent, or authority, and, furthermore, 'the payment of all necessary expenses for the building of bridges and repairing of roads,' etc., is one of the objects and purposes for which a county court may exercise its general power to raise revenue by taxation, within the limits set by section 11, art. 10, of the Constitution (section 12866, R. S. Mo. 1919). We are therefore of the opinion that the levy for road purposes under amended section 10682 in the instant case was a levy for county purposes within the meaning of the re-enacted section 12865, and that as a matter of construction the 10 per cent. restriction applies."

It is, therefore, our opinion that the 10 per cent. limitation in the first proviso of Section 9873, supra, applies to Section 7890, supra, and the county court is not authorized to make a levy under the two sections last above mentioned that will produce mathematically more than 10 per cent. in

Hon. S. P. Dalton

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excess of the taxes levied for the previous year.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

CRH:EG