

RELATING: TO THE TAXING POWER OF CITIES HAVING LESS THAN TEN THOUSAND AND MORE THAN ONE THOUSAND INHABITANTS.

11-9
October 17th, 1934



Hon. A. H. McCrary, Mayor
Pleasant Hill, Missouri

Dear Sir:

We have your letter of October 11th, 1934, in which you state and inquire as follows:

"Will you please give us the following information. Does the city council have the authority to make a small levy to support a city band, if not, can we vote a small levy in addition to our present levy; if voted, would it be necessary to vote on this special levy each year wanted?

Pleasant Hill has a population of 2,330, operates under a special charter, and at present we have the following tax levy:

| | |
|----------------------------------|-----------|
| General fund | .50 cents |
| Special road fund | .25 cents |
| Water works sinking fund (Bonds) | .25 cents |
| Trafficway sinking fund (Bonds) | .15 cents |

Total \$1.15 on each \$100.00 valuation.

We will appreciate this information very much."

I.

A city which has levied the maximum tax permitted by the Constitution for general revenue purposes can not levy an additional tax for any purpose, Nor can the Legislature give it power to exceed the maximum rate provided by the Constitution for cities of its class.

Section 11, Article X of the Constitution of Missouri, ordains 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.....FOR city and town purposes the annual rate on property....in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation.....said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

The limitations upon the power of municipal taxation in Section 11, Article X, Constitution are absolute and cover all taxes of every kind and description and these limitations are self-enforcing.

In Brooks v Schultz, 178 Mo. l. c. 227-8, the court said:

"Section 1 of Article 10 declares: "The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes."

Section 10 of Article 10 is: "The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town or other municipal purposes but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."

Then follows in immediate connections, Section 11 which we have above discussed. The three sections read together mean that the General Assembly may authorize such corporations to levy taxes within the limits specified, but not beyond the limit unless otherwise in the Constitution specified.

In the case before us, the city had already levied a tax of fifty cents on the hundred dollars valuation of taxable property in its jurisdiction; that was the limit of its taxing power, and therefore this special tax of two mills on the dollar for library purposes is illegal....."

In *Arnold v Hawkins*, 95 Mo. 1. c. 572-3, the court said:

"In this case it appears from the agreed facts that the county has levied and plaintiff has paid a tax of fifty cents on the one hundred dollars valuation for county purposes. The tax of forty cents on the one hundred dollars appears to have been levied to pay warrants issued since November 30, 1875, to pay current court expenses made and created since that date. It, therefore, cannot be a tax to pay indebtedness existing at the date of the adoption of the present constitution; and being levied to pay warrants for county current expenses, it cannot be a tax to pay for erecting public buildings. Indeed it cannot be a tax for any purpose for which a tax in excess of the fifty cents on the one hundred dollars valuation can be levied. It is, therefore, clearly within the constitutional prohibition, and is an illegal tax, the collection of which should be enjoined."

From the latter clause of section 11 of Article X of the Constitution, it appears that said restrictions as to rate, shall apply to taxes of every kind and description, whether general or special except taxes to pay valid indebtedness now existing or bonds which may be issued to renew such indebtedness.

It further appears that the Constitutional limit for a city of the class of Pleasant Hill, for general purposes is fifty cents on each one hundred dollars valuation and an additional levy for any purpose whatsoever, except taxes to pay a valid indebtedness would be illegal and void.

It is therefore the opinion of this department that your city authorities have levied the maximum tax permitted by the Constitution for general revenue purposes, and therefore can not levy an additional tax for any purpose, nor can the Legislature give it power to exceed the maximum rate provided by the Constitution for cities of its class.

Very truly yours,

APPROVED:

W. W. Barnes

Asst. Attorney General

Attorney General