

TAXATION:

MUNICIPAL CORPORATIONS:

) Tax rate of city of under one thousand population -
) right to levy in excess of twenty-five cents for
) street lighting purposes.

5-18
May 16, 1935.



Mr. Virgil Calvin, Clerk
Breckenridge, Missouri

Dear Sir:

A request for an opinion has been received from you under date of March 4, 1935, such request being in the following terms:

"I am writing for an opinion from you by order of the City Council of the City of Breckenridge, Missouri, regarding the legality of a tax levy of twenty five cents per hundred dollars valuation, for the purpose of lighting the streets of said City.

This is a City of the fourth class, voting a levy of 25¢ for general revenue, and 60¢ for bonded indebtedness. The assessed valuation land and lot and personal, being \$331,000.00.

The question we want settled is, will an additional levy of 25¢ for street lighting purposes if voted be legal in a City of this class.

Your valuable opinion on this matter will be most welcome and esteemed."

The Constitution of Missouri, Article X, Section 11, imposes certain restrictions on the tax rate for cities, such section being in part as follows:

"For city and town purposes the annual rate on property* * * in towns having one thousand inhabitants, or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation."

The above language makes it clear that a city of less than one thousand inhabitants, within which class the City of Breckenridge falls according to the 1930 United States census, cannot have an annual tax rate exceeding twenty-five cents.

In the case of Brooks vs. Schultz, 178 Mo. 222, 77 S. W. 861 (1903), the City of Cape Girardeau, which already had levied a tax at the rate of fifty cents per hundred dollars, which was the maximum allowed to a city of its size by the above section of the Constitution, attempted to levy an additional two mill tax for library purposes. The Supreme Court of Missouri took the position that a city could not levy a tax to exceed the constitutional maximum, except under certain circumstances for school purposes. The Court said:

"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, unless it can be brought, as respondent seeks to bring it, within the exception which authorizes, under given circumstances, an increase in the rate of taxation for school purposes."

In a previous part of the opinion the court had quoted the above constitutional provision and had rejected the suggestion that the constitutional maximum fixed by that section only imposed a limitation on a levy for general revenue, in the following language:

"That clause of the section above quoted limits the power of the city literally only in the matter of levying taxes for city purposes, that is, for general revenue. It does not in express words forbid the levying of additional taxes for a public library; it leaves fair room for the contention now made by the learned counsel for respondent, that whilst the city can not go beyond the limit there named for its general revenue, it may, if the Legislature so authorizes, levy a special tax for a purpose local to the city, but not for city purposes, that is, not for general revenue to carry on the city government. We would incline to that interpretation if it were not for the concluding clause of the same section, which is: '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.' That clause was intended to prevent the interpretation now attempted to be put upon the preceding clause, and to declare that the power of the city to levy taxes for any purpose whatsoever was limited to fifty cents on the hundred dollars valuation of taxable property, except as therein or elsewhere in the Constitution authorized."

There would seem little doubt that a city of the fourth class has a right to light its streets under the provisions of R. S. Missouri, 1929, Section 7028, but under the above constitutional inhibition we do not believe that it can be done by increasing the tax rate above the constitutional maximum.

You have undoubtedly been confused by the provisions of Section 6948 R. S. Mo. 1929. This section limits the rate of levy in the following terms:

"If such report shows that the city has less than 10,000 inhabitants, the city council may levy on all subjects and objects of taxation for city purposes not to exceed fifty cents on the one hundred dollars valuation. Should the population be one thousand or less, said rate of levy shall not exceed twenty-five cents on the one hundred dollars valuation. The foregoing are maximum rates which may be levied in said cities and towns.* * * *"

There are two following provisos to said section reading as follows:

"Provided, however, the board of aldermen shall not have power to order a rate of tax levy on real or personal property for the year 1931 which shall produce more than ten per cent in excess of the amount produced, mathematically, by the rate of levy ordered in 1930, and in no subsequent year may any such board of aldermen or any officers or officer 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 such city or town, by a majority vote, shall have power to fix an 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. Boards of aldermen 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 board, necessity therefore arises, and shall submit any such proposition at either special or regular election when petitioned therefor by tax-paying

citizens equaling in number one per cent or more of the qualified voters of the city or town, and the proposition shall be as follows on the ballot:

'For a levy for city purposes of _____ on the hundred dollars valuation' and 'against a levy for city purposes of _____ on the hundred dollars valuation.'

* * * * *

The clause above quoted beginning with the term "provided further" has probably been interpreted by you as allowing an election to increase the rate of levy for the purpose of street lighting. However, this proviso modifies directly the foregoing proviso relative to the increase of a tax rate not more than ten per cent each year, and does not modify the maximum amount which may be levied as hereinbefore quoted, to-wit, twenty-five cents on the hundred dollar valuation. This construction is readily verified by referring to page 517, Laws of Missouri, 1921. It will be noted that at that time Section 8399 R. S of 1919, was amended by the adding of the two provisos above quoted. It is certain that no vote for the levy of taxes is authorized when the maximum rate is already levied and the City of Breckenridge being of less than one thousand inhabitants it is limited to the twenty-five cent levy.

In passing on this question we are assuming that the levy contemplated is for the purpose of paying the current expense of street lighting and is not for the purpose of voting bonds to fund indebtedness already created for the purpose of lighting the streets.

CONCLUSION.

It is the opinion of this office that a city of the fourth class having a population of less than one thousand inhabitants, which at present levies a tax for city purposes of

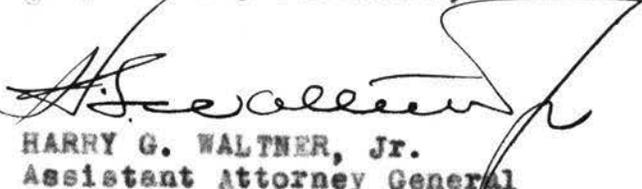
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twenty-five cents on the hundred dollars valuation, cannot with or without an election, levy an additional twenty-five cent tax or any other additional tax to pay the current expense of street lighting.

Respectfully submitted,



HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

HGW:MM