

TAXATION & REVENUE: County Court may through prosecuting attorney and circuit judge levy special taxes to pay past due indebtedness under Section 9868, R. S. Mo. 1929.

November 24, 1936.



Judge Noah Bell
Presiding Judge of the County Court
Alton, Missouri

Dear Judge:

This is to acknowledge your letter of November 19, 1936, addressed to this Department, requesting our opinion on the question submitted therein. Your letter is as follows:

"As we are in debt about \$50,000 in this County and it seems as we will have to try to levy some additional tax to redeem our old warrants, I take the position the County Court can make an extra levy under Sec. 9868 Revised Statutes Missouri, 1929. Some differ with me.

"Will you please give me an opinion from your office. I will be in Jefferson City, Monday 23rd. Will call at your office sometime in the afternoon."

Your question, as we understand it is whether or not additional taxes may be levied by proceeding under Section 9868, R. S. Mo. 1929, by the county court to pay past indebtedness of said county. Section 9868, provides as follows:

"No other tax for any purpose shall be assessed, levied or collected,

except under the following limitations and conditions, viz.: The prosecuting attorney or county attorney of any county, upon the request of the county court of such county--which request shall be of record with the proceedings of said court, and such court being first satisfied that there exists a necessity for the assessment, levy and collection of other taxes than those enumerated and specified in the preceding section--shall present a petition to the circuit court of his county, or to the judge thereof in vacation, setting forth the facts and specifying the reasons why such other tax or taxes should be assessed, levied and collected; and such circuit court or judge thereof, upon being satisfied of the necessity for such other tax or taxes, and that the assessment, levy and collection thereof will not be in conflict with the Constitution and laws of this state, shall make an order directed to the county court of such county, commanding such court to have assessed, levied and collected such other tax or taxes, and shall enforce such order by mandamus or otherwise. Such order, when so granted, shall be a continuous order, and shall authorize the annual assessment, levy and collection of such other tax or taxes for the purposes in the order mentioned and specified, and until such order be modified, set aside and annulled by the circuit court or judge thereof granting the same: Provided, that no such order shall be modified, set aside or annulled, unless it shall appear to the satisfaction of such circuit court, or judge thereof, that the taxes so ordered to be assessed, levied and collected are not authorized by the Constitution and laws of this state, or unless it shall appear to said circuit court, or judge thereof, that the necessity for such other tax or taxes, or any part thereof, no longer exists."

The above section of our statute has been construed several times by the Supreme Court of this State and has been construed and authorizes and empowers a county court to levy additional taxes within the constitutional limits and for the purposes as set forth in said statute.

In the case of State ex rel. Philpott, Collector of Revenue v. St. Louis and San Francisco R. R. Co., 296 Mo. 518, 247 S. W. 182, 1. c. 184, the court quoted approvingly from the case of State ex rel. v. Wabash R. R. Co., 169 Mo. 563 (Syl. 6), wherein it was held:

"A proceeding in conformity with section 7654, Revised Statutes 1889 (now 9868, our section), is proper course to pursue in order to require a county court to make a special levy for the purpose of paying outstanding and unpaid warrants, but a proceeding under that section does not make valid a levy in excess of the constitutional limit. What is meant by that section is that a special levy in addition to a general levy, when the latter does not come up to the constitutional limit, may be made for the purpose of paying past indebtedness."

"See State ex rel. v. Ry. Co., 130 Mo. 243, 248, 32 S. W. 664; State ex rel. v. Miss. River Bridge Co., 134 Mo. 321, 338, 35 S. W. 592."

And the court in the Philpott case set forth for what purposes said money might be applied and said the following:

"The revenue collected to pay past indebtedness must be applied to that purpose and may not be apportioned under section 12866 for current county expenditures. State ex rel. v. Hortsmann, 149 Mo. 290, 297, 50 S. W. 811. Current county expenditures mean expenditures for the year for which the taxes were levied. State ex rel.

v. Payne, 151 Mo. 663, 673, 52 S. W. 412. The only tax that a county court may levy on its own initiative is that for the payment of county current expenditures, as authorized by section 12859, R. S. No other tax for any purpose shall be assessed, levied, or collected, except as authorized by section 12860. In this case the additional 10-cent levy was made by the order of the circuit judge in vacation."

Conclusion.

It is, therefore, our opinion that the county court of your county may proceed under the provisions of Section 9868, R. S. Mo. 1929, 12 Ann. Statutes, page 7942, to have additional taxes levied for the purposes mentioned in your request, but such levy must be within the constitutional and statutory limitations applicable to your county.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR,
(Acting) Attorney-General.

CRH:EG