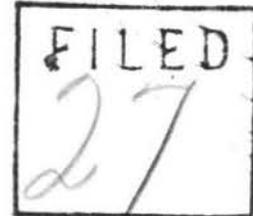


MUNICIPAL CORPORATIONS: COUNTIES: When taxes may be levied for relief purposes and disbursed by relief offices.

June 12, 1937. 6-14

Mr. Lynn M. Ewing, Mayor,
City of Nevada,
Nevada, Missouri.



Dear Mr. Ewing:

We wish to acknowledge your recent letter wherein you state as follows:

"A question has arisen here in the City of Nevada as to the power and authority of a city council of a city of the third class, as in Nevada, to make appropriations from month to month for use of the local relief office. The proposition is whether or not the city has power to make such appropriations and turn over the money to the local relief office for relief purposes. Along with this question there has also been raised the question in the council as to the authority of the County Court to make such appropriations. Naturally, the question resolves itself into whether or not the City Council and the County Court have authority to levy taxes for relief purposes.

"I would appreciate it very much if you would advise me as to the following:

1. Does the City Council have authority to levy taxes for relief purposes.
2. In the event no such taxes are levied, does the City have authority to pay out of its general funds money to the relief office.

3. Does the County Court have authority to levy taxes for relief purposes.
4. If the County Court does not have such direct authority, or in the event it does, and does not levy taxes for this purpose, can it make appropriations for use of relief office."

In the case of *Vrooman v. City of St. Louis*, 337 Mo. 933, 88 S. W. (2d) 189, l. c. 193, the Court in holding that taxes levied by a municipality must be for both a public and a municipal purpose, said:

"A number of cases are cited from this and other jurisdictions asserting the general rule that taxes levied by a municipality must be for both public and municipal purposes. The rule is clearly and concisely stated in *Cooley on Taxation* (4th Ed.) vol. 1, sec. 178, page 388, 389, as follows: 'The "public" that is concerned in a legal sense in any matter of government is the public the particular government has been provided for; and the "public purpose" for which that government may tax is one which concerns its own people, and not some other people having a government of its own, for whose wants taxes are laid. * * * The purpose must in every instance pertain to the sovereignty with which the tax originates; * * * This is the general rule; * * *"

Cooley on Taxation, Vol. 1 (4th Ed.), Sec. 215, page 452, in declaring that the care of the poor is a public purpose, said:

"The support and care of paupers is a public purpose. As to this there is no doubt. The laws not only exempt from taxation the limited means of poor and afflicted persons, but they go further and provide public funds

with which to furnish them retreats where they can be supplied with the necessaries and, to a reasonable extent, with the comforts of life."

The case of Jennings v. City of St. Louis, 332 Mo. 173, 58 S. W. (2d) 979, 982, in holding that all cities have an express grant of authority to care for the poor, said:

"As a municipal purpose, poor relief is recognized by our Legislature in the creation of social welfare boards and in express grants of authority to all of our cities to care for the poor.
* * * Poor relief being a municipal purpose, under section 11, article 10, of the Constitution of Missouri, the city of St. Louis has the power to levy taxes so that its poor may be fed, clothed, and sheltered."

Clearly, then, taxes levied by a municipality for the care of its local poor would be both for a public and a municipal purpose.

You speak of the "local relief office", and we assume that you are referring to the local social welfare boards which under Article 5, Chapter 38, of the Revised Statutes of Missouri, 1929, may be created and established at the option of the mayor and common council in cities of the third class, and not a private agency set up for local relief purposes, since as stated by the Court in the case of State ex rel. v. St. Louis, 115 S. W. 534, 216 Mo. 47, l. c. 91, no municipality is authorized to exact taxes and turn them over to a private individual or to a board of any private corporation to disburse at their discretion:

" * * * taxes should only be levied for public purposes and when collected should be administered and disbursed only by public officers elected or appointed according to law and that their accounts should from time to time be investigated by the lawful authorities, and that municipal

corporations were only authorized to levy and collect taxes for municipal purposes, and municipal enterprises should be conducted and controlled in fact by such municipalities by and through their proper officers, and were not authorized to exact taxes and turn them over to any private individual or board of any private corporation to disburse at their discretion."

Section 6899, R. S. Mo. 1929, authorizes the creation and establishment of a social welfare board in a city of the third class:

"In all cities of the second and third class in this state there is hereby created and established, at the option of the mayor and common council of any such city, a board which shall be styled 'the social welfare board of the city of _____.' All powers and duties connected with and incident to the relief and prevention of dependency, relief and care of the indigent, and the care of sick dependents, with the exception of the insane and those suffering with contagious, infectious and transmissible diseases, and excepting those persons who may be admitted to the county poorhouses of the counties in which such cities are located, shall be exclusively invested in and exercised by said board. Said board shall have power to receive and expend donations for social welfare purposes, and shall have exclusive control of the distribution and expenditure of any public funds set aside and appropriated by such cities for relief of the temporary dependent. Said board shall have power to sue and be sued, complain and defend in all courts, to assume the care of or take by gift, grant, devise, bequest or otherwise, any money, real estate, personal property, right of property or other valuable things, and may use, enjoy, control, sell or convey the same for charitable purposes, to have and to use a common seal and alter

the same at pleasure. Said board may make by-laws for its own guidance, rules and regulations for the government of its agents, servants and employes, and for the distribution of the funds under its control."

The above section expressly confers upon the board the exclusive control of the distribution and expenditure of any public funds set aside and appropriated by the city for relief purposes.

Section 6786, R. S. Mo. 1929, provides that the city council may by ordinance provide for the levy and collection of all taxes, in part, as follows:

"The city council shall, from time to time, provide by ordinance for the levy and collection of all taxes, * * *."

From the foregoing, we are of the opinion that the city council has the authority to levy taxes for relief purposes.

II.

McQuillin on Municipal Corporations, Vol. 5, Sec. 972, page 2337, declares that:

" * * * ordinarily general funds may be appropriated by the council to any municipal object."

44 C. J., Sec. 4116, page 1160, provides that:

"General municipal funds may be used, applied or expended for any lawful municipal purpose."

Funds for relief being for a lawful municipal purpose, we are of the opinion that in the event no taxes are levied for relief purposes, the city has the authority to

pay out of its general funds money to the local social welfare board, if said agency is created and established under Section 6899, supra.

III.

Section 1, Article X, of the Missouri Constitution provides how the taxing power is to be exercised, as follows:

"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 3, Article X, of the Missouri Constitution provides that taxes may be levied and collected for public purposes only:

"Taxes may be levied and collected for public purposes only. * * *"

Section 11, Article X, of the Missouri Constitution fixes the rate of taxation for county purposes:

"Taxes for county * * * purposes may be levied on all subjects and objects of taxation; * * *. For county purposes the annual rate on property, in counties having _____ million dollars or less, shall not, in the aggregate, exceed _____ cents on the one hundred dollars valuation * * *."

Section 12950, R. S. Mo. 1929, provides as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Section 12961, R. S. Mo. 1929, makes it the duty of the county court to set apart funds. It provides:

"The several county courts shall set apart from the revenues of the counties such sums for the annual support of the poor as shall seem reasonable, which sums the county treasurers shall keep separate from other funds, and pay the same out on the warrants of their county courts."

We have already pointed out that taxes for the care of the poor would be for a public purpose, but if levied by a county would also have to be for a county purpose.

In the case of Board of Commissioners v. Peter, 161 S. W. 155, 253 Mo. 520, l. c. 534, the Court in holding that the care of the poor by counties was for county purposes, said:

"We will not go into that field, because roads, bridges, the care of paupers, of the insane, of prisoners, official salaries, the care of public buildings, etc., have usually been considered county purposes within the purview of revenue laws and the administrative details of county business."

In the above case the court had before its consideration whether the Act of 1913 authorizing a levy of twenty-five cents on the one hundred dollars valuation of all property in the county for the maintenance of a tuberculosis hospital was violative of the above constitutional provisions. The Court in holding that the Act standing alone was not violative of Section 1, Article X, of the Missouri Constitution, supra, but that said constitutional provision must be read in connection with Section 11 of Article X of the Missouri Constitution, said, l. c. 535:

"As at present advised, we see no insuperable obstacles to the law in section 1, article 10, of the Constitution, standing alone; but that section, as well as section 3, supra, must be read in connection with section 11 of article 10 of the Constitution, for they pertain to the same subject-matter and are strictly in pari materia. (Brooks v. Schultz, 178 Mo. l. c. 228.)"

And the Court in pointing out further that the provisions of the Constitution were insurmountable barriers for an increase in taxation for county purposes beyond the constitutional limitation, said, l. c. 536:

"The case, then, must stand or fall on the proposition that the proposed levy is in addition to the thirty-five cents allowed by the Constitution for 'county purposes.' Evidently that was the theory of the lawmaker. Otherwise, if the constitutional levy of thirty-five cents for roads, bridges, the care of the insane, paupers, criminals, and the current expenses of the county for salaries, jury service, care of public buildings and what not, is to be depleted by a deduction of a twenty-five cent levy on the hundred dollars for the tuberculosis hospital district, then, all the usual and needful activities of the county would be crippled by starvation into a state of suspended animation akin to death. Self-evidently so benevolent an act as the one under review could not have contemplated so unbenevolent and injurious a result. The itching idea in the lawmaker's mind was to progress, i. e., to keep what we have and get more, not to go backward in governmental purpose and action. The lawmaker, then, must be held to have intended his act to permit a levy in addition to the thirty-five cents permitted by the Constitution, and appellant so argues in a brief most commendable in tone and uncommonly ingenious in reasoning. But we shall not follow the lead of learned counsel. That provision of the Constitution may neither be struck down by the General Assembly nor ignored, nor evaded by deft indirection. It stands there as an insurmountable barrier to an increase in taxation for county purposes beyond the maximum rate of thirty-five cents on the hundred dollars. It goes further. It interprets itself. It declares that the restriction shall apply to taxes of every kind and description whether general or special,

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except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

From the foregoing, we are of the opinion that the county court has the authority to levy taxes for relief purposes, but that same must not be in excess of the constitutional limitation prescribed by Section 11, Article X, of the Missouri Constitution, supra, after having made provision for all the other usual and needful activities of the county.

IV.

In reply to your fourth question whether in the event the county court does not have such authority, or in the event it does have the authority to levy taxes for poor relief, it can make appropriations for the use of the relief office, we enclose herein copies of two opinions rendered by this department under date of November 12, 1934, to Hon. John D. Brooks, Judge of the Grundy County Court, and December 23, 1935, to Hon. John J. Wolff, Associate Prosecuting Attorney of St. Louis County, respectively, wherein it was held that it was the duty of the county court to care for the poor, and that they could not turn the money over for relief purposes to a board, commission or agency to dispense it for them.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

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

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