

COUNTY COURT:

Under Section 9868, R. S. Mo. 1929,
additional levy can be placed on
the collector's books and collected
in the year 1937

August 25, 1937

8-27

Mr. H. J. Simmons
Prosecuting Attorney
Vernon County
Nevada, Missouri



Dear Sir:

This Department is in receipt of your letter of August 9, wherein you request an opinion regarding the following:

"Vernon County, Missouri, has outstanding warrants for the years 1935 and preceding years which cannot be met by the regular taxes. The County Court is contemplating requesting me, as Prosecuting Attorney, to petition the Circuit Court to make a levy to take care of these outstanding warrants by virtue of Section 9868 R. S. Mo. 1929. A question arises as to when this levy will take effect if made at the present time. To be more explicit, if the Circuit Court makes a levy during the month of August this year, can that levy be placed on the books and collected by the collectors this fall?

"I would appreciate your opinion on this matter within the next few days so that the court may decide on this matter."

Section 9866, Revised Statutes Missouri 1929, which was amended by the 1933 session of the Legislature, Laws of Missouri 1933, page 362, relates to the levy for state

purposes.

Section 9867 refers to the taxes to be assessed, levied and collected.

It was held in the case of State ex rel. v. Railroad, 247 S. W. 182, that current county expenditures means expenditures for the years for which the taxes were levied. It was further held that for the purposes of taxation the county's fiscal year begins on the 1st day of January and ends on the 31st day of December, annually.

In State ex rel. v. Allison, 155 Mo. 325, referring to Section 9868, the same being the section which contemplates following the procedure as therein contained, the said section contains no provision as to the time the additional levy, if approved by the circuit court, should be made or the limitation as to the time. Section 9868 following immediately the other two sections, to-wit, 9866 and 9867, hereinbefore referred to would indicate that all sections are to be taken into consideration by the county court at the same time with reference to a levy. However, the fallacy in this statement may be noted by viewing the matter from a practical standpoint, that is, considerable time would elapse before obtaining the court order in Section 9868 and perhaps the financial condition at the time that the regular levy is made could not be determined by the county court with reference to past indebtedness.

Section 9876, as amended by the Legislature, Laws of Missouri 1933, page 421, limits the time for the county clerk to extend the taxes, but makes no reference as to the time allowed for any special levy or for any levy made under Section 9868.

However, coming closer to your question which, in substance, is "can the levy be placed on the books and collected by the collector this fall," we think the answer can be determined by the statute itself. Among other things, Section 9868 contains the following expression,

"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 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.* * "

By the provisions of Section 9868 it would appear that if the court was satisfied of the necessity "for such other tax or taxes" then, immediately upon its finding, such finding would be in full force and effect. The statute further states that the order can be carried out by the remedy of mandamus and that the order shall continue from year to year. Therefore, we think that in the absence of the court specifying that the order was not to become effective until a certain date that it would immediately become effective.

We have referred to certain sections dealing with the time of the levy, knowing that the tax books have probably been extended and completed by the county clerk thereby creating a situation which might make it impractical for the additional levy to be levied and collected for the year 1937, yet, we think that such a situation might be overcome by Section 9878 which refers to the making of a supplemental tax book.

Based on the provisions of section 9868 itself, and the provisions of other statutes relating to assessment, levy and collection of taxes, we are of the opinion

Mr. H. J. Simmons

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that the levy can be placed on the books and collected by the collector this fall.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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