

TAXATION:

Authority of a county to levy a tax, in addition to the constitutional maximum, to pay outstanding warrants.

February 21, 1938

Mr. Morgan M. Moulder,  
Prosecuting Attorney,  
Camdenton, Missouri.



Dear Sir:

Your letter of February 16th, last, requesting an opinion from this office, is received, which letter is as follows:

"Camden County has a total assessed valuation of about \$7,500,000.00. The Constitution and the limitation of taxes to be levied, as provided in Section 9873, Revised Statutes of Missouri, 1929, permits a levy not exceeding forty cents on the one hundred dollar valuation for county purposes. The amount received from the forty cent levy is no more than is necessary to pay current expenses.

"Prior to the enactment of the budget laws controlling the expenditures in the counties of this state, Camden County for many years spent slightly more than its income, which caused and created an indebtedness amounting to about \$25,000.00 in outstanding back warrants which were not paid at the time the new budget law went into effect. Under the present budget law and system the county has no balance whatsoever to apply on the payment of said outstanding back warrants.

"Section 9868, Revised Statutes of Missouri, 1929, provides that the prosecuting attorney of any county, upon the request of the county court of such county, may present a petition to the circuit court or judge thereof in

vacation requesting an order for an additional levy and collection of taxes for other purposes, which would enable Camden County to levy an additional ten cents for the purpose of paying said back warrants and past indebtedness which is outstanding against the county.

"Does Section 9868, Revised Statutes of Missouri, 1929, authorize, if the proceedings therein provided for are followed and complied with, Camden County to levy and collect ten cents or any amount in excess of forty cents for the purposes of paying the past indebtedness consisting of the outstanding warrants hereinbefore mentioned?"

Your question, as appears from your letter, is whether or not Camden County can levy an additional tax, under Section 9868, R. S. Mo. 1929, in addition to the forty cents which it appears from your letter it has or will levy for the current year.

Section 11 of Article X of the Constitution of Missouri provides, among other things, as follows:

"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 six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation."

Said Section 9868 provides, among other things, as follows:

" \* \* \* that the assessment, levy and collection thereof (of taxes) will not be in conflict with the Constitution and laws of this state."

In the case of State ex rel. v. Wabash Railroad Co., 169 Mo. 563, Ray County levied a tax, under Section 7654, R. S. Mo. 1889 (now Section 9868, R. S. Mo. 1929), of an additional twenty cents, over and above the constitutional limit of forty cents to which it was entitled for general purposes, to pay out-

standing warrants. Hence, the facts in the above case are substantially identical with the case at hand. The court in the above case said, among other things (l. c. 573):

"The vital question to be considered in this case is with respect to the validity of the levy in question Ray county having more than six million dollars and less than ten million dollars valuation, was limited to a levy (which was made) of forty cents on the one hundred dollars, by the express terms of section 11, article 10, of the Constitution of the State, and, unless the special levy of twenty cents in addition thereto was authorized by section 12 of the same article of the Constitution, or by section 7654, Revised Statutes 1889, it must be held invalid."

Again, the court said (l. c. 577):

"Now, if under such circumstances, the county court had the power to make a special levy of twenty cents on the hundred dollars valuation of property in the county in addition to the levy of forty cents, the constitutional limit, it could of course upon the same theory and by the same authority levy fifty or one hundred per cent and thus ignore those wholesome provisions of our Constitution which were intended to protect the property rights of the people, and to prevent its confiscation by an evasion of that instrument. That no such purpose was contemplated by the statute is indisputable, but what was meant thereby was 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 of the county, provided it, including the general levy, or the levy for general purposes, does not exceed the constitutional limit."

Mr. Morgan M. Moulder

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We might add here that a number of later decisions from our Supreme Court follow and sustain the above cited case in the principle that a county cannot levy a tax in excess of the maximum constitutional rate.

CONCLUSION.

Hence, in view of your letter stating that Camden County will be required to levy the full and maximum rate of forty cents allowed it by the Constitution in order to pay necessary current expenses, it is our opinion that the county is not authorized under the section referred to, namely, Section 9868, to levy an additional tax of ten cents, or any other amount, for the purpose of paying the outstanding back warrants you mention.

Respectfully submitted,

J. W. BUFFINGTON,  
Assistant Attorney General.

APPROVED:

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

JWB:HR