

TOWNSHIP ORGANIZATION:

Township taxes are junior to county taxes for county purposes and the total of the two can not exceed the maximum provided for by the Constitution for county purposes.

TAXES:

May 3rd, 1939.

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Mr. Charles E. Hassett,
Prosecuting Attorney,
Henry County,
Clinton, Missouri.

Dear Sir:

We acknowledge receipt of your request which is as follows:

"A question has been brought up with respect to the limitation upon the levy that may be made by a township board in a county under township organization for road and bridge purposes and for incidental township expenses.

I note that Section 22 of Article 10 of the state constitution a township board may levy a special road and bridge tax not exceeding twenty-five cents on each \$100 valuation and that the proceeds of this tax are restricted to road and bridge purposes alone. Under section 12308, R. S. 1929, which section provides for a tax levy to defray township expenses, the following proviso is set out: 'Provided, that said expenses is not, together with the amount levied for road purposes and for special bridge tax, exceed in any one year twenty cents on the one hundred dollar valuation.'

Undoubtedly a township board may levy not exceeding twenty-five cents for a special road and bridge fund under the limitation set by the constitution. However, the question which I want determined is whether or not they have a right to exceed that fund, which of course is limited solely to road and bridge purposes, in order to receive sufficient income to defray other township expenses. To state the question in a different manner, can a township board authorize a special road and bridge levy up to twenty-five cents on the \$100 valuation, and in addition thereto make a levy of five or six cents on the \$100 valuation to defray township expenses; or is such a township board limited to not exceed twenty cents for all purposes by the effect of Section 12308? If a township is enabled to make an additional levy over and above the twenty-five cents I should like your opinion as to the limit which would be placed on such an additional levy. As this is a matter which is to be of more than one interpretation we would appreciate an opinion from your office as to the question."

Your request stated another way appears to be: What is the maximum limit of taxes that may be levied for township expenses? Section 22 of Article 10 of the Constitution of the State of Missouri does not deal with the same subject matter raised by your inquiry. Said Section 22 of the Constitution has to do with the authorization of a tax for special road and bridge purposes, but the revenue contemplated by Section 12308, R.S. No. 1929, is not for road and bridge purposes but is for the general expenses of the township.

Section 11 of Article 10 of the Constitution of the State of Missouri, deals with the same subject matter and prescribes the rate which may be levied for county purposes, and fixes the maximum rate that may be levied in a given county dependent on the population of that county.

The provision that the county rate in counties having a valuation between \$10,000,000.00 and \$30,000,000.00 shall not exceed fifty cents on the one hundred dollar valuation. I assume your county to fall within that class. If, however, it falls in some other class as in said Section defined the principle to be applied is the same, although the amount might be different.

In the case of State ex rel. against Kansas City, St. Joseph and Council Bluffs Railroad Company, 145 Mo., 596, it was held that where a county court made a levy of fifty cents upon the one hundred dollar valuation of property "for county purposes" in a county having less than \$6,000,000.00 worth of property, a further levy of ten cents by townships for "road purposes" is illegal. And that was true whether the county had regular township organization or was organized into townships for road purposes. It was also held in that case that under the words "taxes levied for county purposes" are to be included road taxes levied by townships. The court then said, page 598:

"Plaintiff seeks to avoid the position of defendant by insisting that the road taxes in question were not levies for county purposes.' He insists it is for a strictly municipal purpose, and therefore not within the prohibition of section 11, Article X of the Constitution.

In State ex rel. Hirni v. Railroad, 123 Mo. 72, it was conceded by counsel for the relator, that townships in counties not under township organization were mere geographical subdivisions of the county and in no sense corporations, but they insisted that townships under township organization were municipal corporations and a different principle must govern; but this court held that the Constitution made no distinction between counties that might adopt township organization and those that remained under original county organization as to the rate of taxation that should be allowed in each for government purposes, saying: 'The mere change of the mode of administering county governments does not, and can not change the purpose for which taxes are raised to conduct that government, and as the purpose remains the same in each so the limitations must be the same in each. This must be so, or the framers of our Constitution have wrought in vain to limit the expenses of county government, and their whole legislation on this subject may be set at naught. For, to defeat it entirely, it will only be necessary for all the counties of the State to adopt township organization, and the legislature may then authorize them in addition to the taxes allowed by the Constitution for county purposes, to levy township taxes ad libitum. A construction of the Constitution which would thus authorize the defeat of its main purpose can not be entertained for a moment.' "

In the case of State ex. rel vs. Piper, et al., 214 Mo. 439, the Supreme Court of this State en banc in 1908, held that a county having township organization the taxes levied by the township board should be considered as a part of the taxes levied by the county court "for county purposes" and that 80% of the tax levy "for county purposes" go to the county and 20% to the township board, and if the tax levied by the court is the maximum rate permitted by the Constitution "for county purposes" the townships can have for road and all other purposes only 20% of the amount levied by the county court, and said, page 444, the following:

"The effect of a judgment in relator's favor would be to cut down the assessment for general county purposes from thirty-two to thirty in some cases and to twenty-eight and twenty-five in others.

It is not claimed by the relator that the townships have the right, in the exercise of their statutory power, to assess a road tax so as to increase the total county assessment beyond the forty cents, but he contends that the townships may go to the limit of fifteen cents for roads, and in addition make an assessment necessary to defray township expenses, and those assessments being certified to the county court that court must conform to the action of the townships, give them their full road tax and sufficient to pay township expenses, and appropriate what is left of the forty cents, whatever that may be, to general county purposes. That would render the county court, when making provision for the expense of conducting the county affairs, to a

large extent, subordinate to the township boards. That was not, originally at least, the intention of the General Assembly as expressed in the statutes governing this subject, and if the Legislature has ever changed its purpose in that particular, it has not expressly said so, but appellant contends it has so implied.

The Constitution, article 10, section 11, in imposing this limitation on tax assessments used the words, 'For county purposes,' which include in their meaning all subdivisions of the county for the use of which taxes may be imposed. Section 9284, Revised Statutes 1899, quotes these words 'for county purposes' and uses them in the same sense in which they are used in the Constitution. That section is as follows: 'In all counties in this State which have now or may hereafter adopt township organization, if the amount of revenue desired and estimated by the county court for county purposes and the amount desired and estimated by any township board for township purposes shall together exceed the rate percent on the one hundred dollars valuation allowed by section 11 of article 10 of the Constitution of Missouri 'for county purposes' then it shall be the duty of the county court to apportion the tax 'for county purposes' between the county organization and the township organization in the following manner, to wit: Eighty per cent of the taxes which may be legally levied 'for county purposes' shall be apportioned to the county organization for county purposes, and twenty per cent of such taxes shall be

apportioned to the township organization for the purposes provided by section 10277 of the Township Organization Law, as specified by the township board; but the combined rate for both the county and township organizations shall not exceed the maximum rate provided by the Constitution.'

Section 10277 referred to in that section is as follows: 'The following shall be deemed township charges: First, the compensation of township officers for their services rendered in their respective townships; second, contingent expenses necessarily incurred for the use and benefit of the township; third, the moneys authorized to be raised by the township board of directors for any purpose, for the use of the township.'

It is contended that section 9284 does not include taxes levied for road purposes. If that is so, then that section means that the county court shall apportion eighty per cent of the total forty cents to general county purposes and twenty per cent to payments to the officers of the township organization as compensation for their services and contingent expenses, thus exhausting the whole tax, leaving nothing for roads. That would be unreasonable. The General Assembly did not intend to enact a statute that would be self-destructive. The meaning of that section is that the county court shall apportion the tax, eighty per cent for general county purposes and twenty per cent for all such township purposes as the township has a right to exercise. This construction does not deprive the township of the right to levy a tax for road purposes, as relator thinks it would, but

but it limits the share that may be apportioned to the township for all its purposes out of the fund to be derived from the forty cents assessment to an amount which will leave sufficient of that fund to furnish the amount estimated by the county court as necessary for general county purposes, and if there is not enough for both the county must have eighty per cent and the township what is left.

Relator also contends that if section 9284 is construed to include road taxes, then the section has been repealed by implication because, he says, it is in conflict with section 10324, Laws 1901, p. 254, which he says is a later law. That act in its title purports to be an act to repeal certain sections of the Revised Statutes of 1899 specifically mentioned and to enact new sections in lieu thereof. Section 9284 is not one of the sections mentioned as proposed to be repealed, but section 10324 is one of them. The section by the same number enacted in the place of 10324, is substantially the same as the one whose place it takes, except that in the former the limit on the road tax which the township board could assess was twenty cents on the \$100, in the latter it was cut down to fifteen cents, and in the former fund when collected was to be kept by the township treasurer and paid out only on warrants of the township board, in the latter it is to be paid out only on order of the road overseer. The sole purpose of the repealed section was to give the township board power to levy a road tax and the sole purpose of the section enacted in its place was the same. Section 10324, Re-

vised Statutes 1899, is also substantially the same as section 8527, Revised Statutes 1899, which was enacted first in 1883. The two sections, 9284 and 10324, are not at all in conflict; they are not on the same subject, the one confers power on the county court to apportion the total fund arising from the forty cents tax, the other confers on the township board the power to assess a road tax, and the latter was passed in full view of the power then existing in the county court to make the apportionment and it is subordinate to it. The two sections are in the same volume of the Revised Statutes 1899, both promulgated as the law of the State in the same revision. Surely if the General Assembly had intended to say that the one repealed the other, or that the township board had the authority to appropriate to itself one-half of the total tax authorized by the Constitution to be levied for all county purposes, it would not have left so remarkable a purpose to be gathered from so vague an inference. We hold that whether or not the township board in this case had authority to assess the road tax which it did assess, still, the county court had the power to apportion the whole levy in the way it did, giving twenty per cent to the township board to be administered by it, in building its roads and paying its necessary expenses, and reserving eighty per cent to be administered by the county court for general county purposes, and that the township board must exercise the taxing power given to it in subordination to the authority of the county court to make the apportionment required in section 9284."

Section 9875, Revised Statutes of Missouri, 1929, provides as follows:

"In all counties in this state which have now or may hereafter adopt township organization, if the amount of revenue desired and estimated by the county court for county purposes and the amount desired and estimated by any township board for township purposes shall together exceed the rate per cent. on the one hundred dollars valuation allowed by section 11 of article 10 of the Constitution of Missouri 'for county purposes', then it shall be the duty of the county court to apportion the tax 'for county purposes' between the county organization and the township organization in the following manner, to wit: Eighty per cent. of the taxes which may be legally levied 'for county purposes' shall be apportioned to the county organization for county purposes, and twenty per cent. of such taxes shall be apportioned to the township organization for the purposes provided by section 12303 of the township organization law, as specified by the township board; but the combined rate for both the county and township organizations shall not exceed the maximum rate provided by the Constitution."

The above section should be read in connection with Section 12308, Revised Statutes of Missouri, 1929, and provides the proportion of taxes which goes to the township where the county has levied the maximum taxes for county purposes. Section 12308 becomes inoperative if and when the county has levied the maximum rate allowed under the section for county purposes. Section 12308 is only a delegation of the right or authority to

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the township to raise the taxes therein specified when the county has not exercised its authority to levy the maximum rate for county purposes. If the county has not exercised its authority to levy the maximum rate for county purposes, then the difference between the rate the county has levied for county purposes and the maximum rate which could be levied for county purposes, is the field within which section 12308 might be invoked.

CONCLUSION

It is our opinion that if the county has levied the maximum rate for county purposes, then the provisions of section 12308 become non-applicable and the rate so levied by the county for county purposes and the proceeds collected because thereof are to be apportioned in the following way: Eighty per cent thereof shall go to the county for county purposes and twenty per cent thereof shall go to the township for township purposes. If the county had not levied the maximum authorized for county purposes by the provision of the Constitution, then the difference between the rate that has been levied for county purposes and the maximum authorized therefor is subject to the operation of the provisions of Section 12308 and within the limits thereof, the township board may levy the rate in said Section 12308 provided.

Yours very truly,

APPROVED:

DRAKE WATSON,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

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