

TAXATION AND REVENUE:
LEVY OF TAXES:

The levy for current county expenses and for the purpose of paying outstanding obligations may not be made by the county court in excess of the constitutional limit.

March 6, 1940

3-11



Honorable Charles T. Bloodworth, Jr.
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department based on the following statement of facts:

"The County Court of this county has levied the full rate of fifty-cents on the one hundred dollar valuation as permitted in Section 9873, Missouri Statutes. There are several thousand dollars in debts and obligations, which the county owes and became obligated for in years prior to this year. In these debts and obligations is a judgment against the county in the sum of \$2800.00, which judgment remains due and unpaid and is in favor of the eleemosynary institutions of the state.

"The County Court has now, under Section 9868 of Missouri Statutes, made a court order directing and requesting the Prosecuting Attorney of this county to prepare a petition directed to the Circuit Judge, praying that an additional levy of twenty-cents on the one hundred dollar valuation be made to take care of this judgment and several thousand dollars in past due obligations.

"The County Court has requested me to seek an opinion for them from you as to whether or not they can exceed

Hon. Charles T.
Bloodworth, Jr.

(2)

March 6, 1940

this maximum levy of fifty-cents on the one hundred dollar valuation for the purposes set forth hereinabove and in the manner described hereinabove. I refer you to the case of State ex rel. vs. Railroad, 247 S. W. 182."

You state in your letter that the county court has fixed the rate of the levy for county purposes at fifty cents on the one hundred dollars valuation. This rate of levy is authorized by virtue of the provisions of Section 9867, R. S. Missouri 1929.

Since the amount of money raised under the foregoing levy is only sufficient to pay the current indebtedness, then you ask whether or not an additional levy may be made by virtue of the provisions of Section 9868, R. S. Missouri 1929. The provisions of this section, which are pertinent to your question, are 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

Hon. Charles T.
Bloodworth, Jr.

(3)

March 6, 1940

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."

It will be noted that the levy authorized by said Section 9868 must not be in conflict with the Constitution and laws of this state.

The provisions of the Constitution, which relate particularly to the rate of levy that may be made for county purposes, will be found in Section 11 of Article X, Constitution of Missouri which provides in part as follows:

"Taxes for county, city, town and school purposes may be levied on all

Hon. Charles T.
Bloodworth, Jr.

(4)

March 6, 1940

subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. * * * "

We do not have before us the valuation of your county, but it will be noted under the foregoing provisions of the Constitution that no county is authorized to make a levy for county purposes which exceeds fifty cents on the one hundred dollars valuation. Since your county court has reached this maximum, then any levy in excess of fifty cents on the one hundred dollars valuation, which would be directed by said Section 9868, apparently would be in conflict with said Section 11 of Article X of the Constitution.

In speaking of the constitutional limitations of the levy authorized by said Section 9868, the Supreme Court, in *State ex rel. v. Wabash Ry. Co.*, 169 Mo. 563, 70 S. W. 132, said:

"A proceeding in conformity with section 7654, Revised Statutes 1889 (now 12860, R. S. 1919), is the proper course to pursue in order to require a county court to make a

Hon. Charles T.
Bloodworth, Jr.

(5)

March 6, 1940

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."

It will be noted that the court in plain language here stated that the levy authorized by said Section 9868 to pay past indebtedness together with the levy authorized by said Section 9867 must not exceed the constitutional limit authorized by said Section 11 of Article X of the Constitution of Missouri.

CONCLUSION.

From the foregoing it is the opinion of this department that the county court, even though requested and directed to make a levy in accordance with the provisions of Section 9868, R. S. Missouri 1929, would not be authorized to fix the levy at an amount in excess of fifty cents on the one hundred dollars valuation which must include the levy provided by said Section 9867. Therefore, since your county court has already made the levy under Section 9867, R. S. Missouri 1929, of the maximum amount authorized by the Constitution, then any levy authorized under said Section 9868 in excess of that amount would be in violation of the aforesaid provisions of the Constitution and void.

Respectfully submitted

APPROVED:

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Assistant Attorney General

COVELL R. HEWITT
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