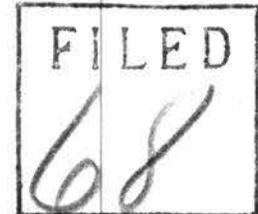


TAXATION AND REVENUE: Levy voted for county libraries must be kept within the limitations set out in Section 11 of Article 10 of the Constitution of Missouri.

March 26, 1940

Miss Ruth O'Malley  
Secretary  
Missouri Library Commission  
Jefferson City, Missouri



Dear Miss O'Malley:

We are in receipt of your request for an opinion under date of March 20th, which reads as follows:

"May we have an opinion on two additional points in the law governing the establishment of county libraries in Missouri (Section 13463, p. 3501, Revised Statutes 1929).

"Does the fact that a county is levying taxes to its constitutional limitation prevent its voting on the establishment of a county library?

"If not, when such a county votes a tax for a county library is the tax provided for from the general revenue or is it an additional levy."

Section 11, Article 10 of the Constitution of Missouri partially reads as follows:

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"\* \* \* 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. \* \* \* \*"

The above section also provides for additional levies for school purposes. The only other constitutional section which provides for an additional levy in excess of that as set out in Section 11 of Article 10 of the Constitution is Section 22 of Article 10 of the Constitution, which provides for special road and bridge taxes.

Section 13463 R. S. Missouri, 1929, partially reads as follows:

"Whenever one hundred (100) taxpaying citizens of any county, outside of the territory of all cities and towns now or hereafter maintaining, at least in part by taxation, a public library, shall in writing petition the county court, asking that a county library district of the county, outside of the territory of all such aforesaid cities and towns, be established and be known as ' \_\_\_\_\_ county library district,' and asking that an annual

tax be levied for the purpose herein specified, and shall specify in their petition a rate of taxation not to exceed two mills on the dollar; \* \* \* \* \* and the tax specified in such notice shall, subject to provisions herein below of this section, be levied and collected, from year to year, in like manner with other taxes in rural school districts of said county. The proceeds of such levy, together with all interest accruing on same, with library fines, collections, bequests and donations in money shall be deposited in the treasury of the county and be known as the 'county library fund,' and be kept separate and apart from other moneys of such county, and disbursed by the county treasury only upon the proper authenticated vouchers of the county library board hereinafter mentioned; \* \* \* \* \*

Under the above section it will be noticed that the taxes levied and collected should be set aside in a separate fund and be known as the "county library fund."

In your request you state that a county is levying taxes to its constitutional limitation at the present time. Since Section 11 of Article 10, Constitution of Missouri, specifically states the limitation and does not provide for an additional levy of any kind except for school purposes, any levy under Section 13463, R. S. Missouri, 1929, must come within the limitations as set out in the constitutional limitation.

No case has been presented to the Supreme Court of Missouri in reference to this question on county libraries, but a very analogous case has been decided by the Supreme Court of the State of Missouri on the question of city libraries in which the city has levied the full limitations as authorized by the constitution.

In the case of Brooks v. Schultz, 178 Mo. 222, l. c. 227, the court said:

"It is contended on behalf of respondent that section 11 of article 10, just quoted, is not a limitation on the power of the General Assembly, but only on that of the county, school district or municipal corporation, and as to them only a limitation on the power of taxation by that section conferred upon them. The proposition is that section 11 of article 10 confers directly on counties, school districts, cities and towns, authority to levy taxes to the limit therein specified; that that authority they may exercise independent of the will of the General Assembly, and that in addition thereto, they may impose such taxes as the General Assembly may authorize.

"That is a misconception of that section. There is no language therein which is susceptible of the meaning that governmental power is conferred on counties, school districts and municipal corporations independent of the Legislature. The first sentence in the section only points out the character of property subject to taxation, and lays a restriction in the matter of assessing its value; all the rest of the section is negative in form and is in effect a declaration that be-

yond a certain limit, taxation shall not go; the provisos, though in form permissive, are but exceptions to the restrictions which they follow.

"Section 1 of article 10 declares: '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 10 of article 10 is: 'The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town or other municipal purposes but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.'

"Then follows in immediate connections, section 11 which we have above discussed. The three sections read together mean that the General Assembly may authorize such corporations to levy taxes within the limits specified, but not beyond the limit unless otherwise in the Constitution specified.

"In the case before us, the city had already levied a tax of fifty cents on the hundred dollars valuation of taxable property in its jurisdiction; that was the limit of its taxing power and therefore this special tax of two mills on the dollar for library purposes is illegal, unless it can be brought,

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as respondent seeks to bring it, within the exception which authorizes, under given circumstances, an increase in the rate of taxation for school purposes."

#### CONCLUSION

In view of the above authorities it is the opinion of this Department that a county which is levying taxes to its constitutional limitations may vote on the establishment of a county library. But such a tax must be allocated from the general revenue and is not considered an additional levy as set out for schools and bridges and roads. It is further the opinion of this Department that the tax so levied must be taken from the general revenue and be kept separate and apart from other moneys of such county.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

COVELL R. HEWITT  
(Acting) Attorney General

WJB/rv