

TAXATION: Township boards in counties under township
COUNTY COURTS: organization levy taxes in subordination
TOWNSHIP to the county court and the total levy
ORGANIZATION: made by the county court and township board
shall not exceed the constitutional limit.

June 2, 1941.

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Honorable Arkley Frieze
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Mr. Frieze:

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

"The township collector of Washington Township of Dade County, and the ex-officio collector are experiencing trouble in the collection of taxes levied by the township board in Washington Township. The objection is made that the levy is excessive and illegal.

"The county court of Dade county levies the maximum of 40¢ allowed under the Constitution, retaining 32¢ thereof and paying 8¢ to the townships. For the 1940 tax year, the township board of Washington Township levied 20¢ for roads and 15¢ for township purposes. The rates, therefore, as extended on the tax books are, as follows:

<u>"State</u>	<u>County</u>	<u>Road</u>	<u>Township</u>
.12	.32	.20	.15

"Since there has always been a misunderstanding in the various townships of this county as to the maximum levy that may be made by the township boards, your opinion is respectfully requested for the future guidance of township officials."

The section of the statutes which authorizes levies to be made for township purposes is Section 11047, R. S. Mo. 1939. This section reads 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 X 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 13980 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."

You state in your letter that the county of Dade levies the maximum of 40¢ allowed under the Constitution. We presume you refer to the maximum levy for county

purposes authorized by the Constitution. Article 10, Section 11.

Section 22 of the same article of the constitution authorizes an additional levy for road and bridge purposes by counties and township boards. Your request, however, does not appear to pertain to the levy made under this section. The Supreme Court in *State ex rel. v. Piper*, 214 Mo. 439, l. c. 446, in explaining the provisions of what is now Section 11047, R. S. Mo. 1939, said:

"* * * 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 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."

Your request indicates that the total assessment made by the county and township, for county purposes, amounted to 40¢ on the \$100.00 valuation.

Referring to the constitutional limit of 40¢, it will be seen that the total amount of the levy is excessive by 7¢. Under said Section 11047, supra,

Hon. Arkley Frieze

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and by the ruling announced in the Piper case, supra, the amount levied by the county court is valid, but the township levy is excessive in the amount of 7¢.

CONCLUSION

It is, therefore, the opinion of this department that the county court in a county, in which the maximum levy for county purposes is 40¢ on the \$100.00 assessed valuation and in which township organization is in effect, under the provisions of Section 11 of Article 10 of the Constitution, may levy 32¢ on the \$100.00 assessed valuation for county purposes and the township boards in such counties may levy 8¢ on the \$100.00 assessed valuation.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

TWB:LB