

TAXATION: County Court authorized to make additional
SPECIAL ROAD AND X of the Constitution for special road and
BRIDGE TAXES: bridge taxes.

January 24, 1941

Mr. Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit the following facts and request:

"On the 1941 Budget form #1, page 1, furnished by the Auditor to the County Clerk, entitled Tax Rate and Valuation, at item #1 there are the following entries under the general heading Tax rate for all revenue purposes preceding year:

(a) General county revenue operating fund \$_____, Per \$100 Assessed Valuation.

(b) County road and bridge fund (Sec. 7890, R. S. Mo. 1929) \$_____ Per \$100 Assessed Valuation.

"It has been the custom in this county for the County Court to make a 35¢ levy for \$100 assessed valuation, which is known as the general county revenue operating fund, and the county in the past has also assessed a special 20¢ per \$100 assessed valuation as a Special Road and Bridge Fund. Under the form that the Court has received for 1941, Section (B) as above mentioned entitled County road

and bridge fund, Sec. 7890, R. S. Mo. 1929, would indicate that the 20¢ additional road and bridge fund should be levied under Section 7890. My investigation has indicated to me that Section 7890 for a 20¢ levy and should be included in the general county revenue fund and be in the 35¢ per \$100 assessed valuation, and that the Special road and bridge fund that the county has been assessing in this county, should be levied under Section 7891, which provides for a Special road and bridge levy. In checking through the constitution, I noticed that Article 10, Section 11, provides for the general revenue fund of 35¢ in counties similar to Saline County, and that Article 10, Section 22, provides for the Special road and bridge levy and apparently corresponds with Section 7891 of the R. S. of 1929. Our County Court is preparing its budget for the coming year and is anxious to get this matter cleared up for, in my opinion, if this special levy was made under 7890, the County would likely be limited to only a 35¢ levy and would not be able to make the additional 20¢ levy for roads and bridges as they have done in the past."

We find that this office, on December 15, 1938, by an opinion to Miss Thela Shuck Henry, Prosecuting Attorney of Shannon County, held that the county road and bridge tax is, by virtue of the provisions of Section 7890, a part of the levy for county purposes. We are enclosing a copy of this opinion for your information.

From this opinion, applying the facts to your county, which comes within the brackets under the Constitution which limits the levy to 35¢, your county court would be required to include the levy authorized by Section 7890 R. S. Mo. 1929 in the 35¢ levy for county purposes. As a

suggestion, however, it might be advisable for the county court to make a levy of some amount under said Section 7890 in order that it may be authorized to make the levy under Section 7891 and under Section 22 of Article X of the Constitution. We suggest this for the reason that both Section 7891 of the statute and Section 22 of the Constitution start off with the words: "In addition to the levy authorized by". This clause of these sections indicates that the writers of the Constitution and the Legislators contemplated that some levy would be made under the county road and bridge fund sections.

Referring to Section 22 of Article X of the Constitution and Section 7891, R. S. Mo. 1929, which was enacted by the General Assembly by virtue of the authority of said Section 22, we find that the courts have held that the levies authorized under these sections are not to be included in the limitations placed on the county courts by the provisions of Section 11 of Article X for county purposes.

The Supreme Court, in the case of State ex rel. Johnson v. A. T. & Santa Fe Ry. Co., 310 Mo. 587, l. c. 596, in speaking of Section 22, Article X of the Constitution, which authorizes the levy for special road and bridge purposes, said:

"This section is a grant of power, and not a limitation of power, except as to the amount. The two sections (11 and 22) must be construed together and both permitted to stand, if they can be reconciled. Upon its very face, Section 22 of Article X is a provision for an additional tax, not contemplated in Section 11. When construed together, the two sections mean that, in addition to the allowable and limited tax specified in Section 11, the county, in the discretion of the county court,

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can levy an additional special road-and-bridge tax not to exceed twenty-five cents on the \$100. To make it plain, if the county can levy fifty cents on the \$100 under Section 11, it can in addition levy as much as twenty-five cents per \$100 more for the special road-and-bridge fund of the county. In other words, construing the two sections together, the levy for all county purposes (and the special road-and-bridge fund is for a county purpose) may reach the total of seventy-five cents on the \$100. *

* * *"

So, in your case, where the limit of levy for county revenue purposes is thirty-five cents on the assessed valuation, then the county court would be authorized to levy as much as sixty-cents on the \$100 assessed valuation, which would include the twenty-five cents levy authorized under Section 22 of Article X of the Constitution and Section 7891, R. S. Mo. 1929.

CONCLUSION.

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It is, therefore, the opinion of this department that the special road and bridge tax levy authorized by Section 22 of Article X of the Constitution and Section 7891 R. S. Mo. 1929 may be made in addition to the limitations placed on the county under Section 11 of Article X of the Constitution.

Respectfully submitted,

APPROVED:

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(Acting) Attorney-General

TWB:CP