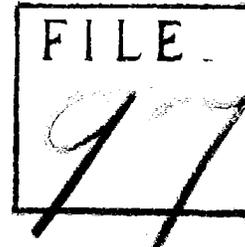


**TAXATION:** Amount of levy that may be made for township  
**TOWNSHIP:** purposes, including special road and bridge fund.

✓ / ✓ / ✓  
September 5, 1941

Honorable Mark Wilson  
Prosecuting Attorney  
Henry County  
Clinton, Missouri



Dear Sir:

This Department is in receipt of your request for an official opinion, which reads as follows:

"IN RE: Opinion concerning taxing power of township boards.

"The county court of this county, the county clerk, and several township boards have requested an opinion on the above matter.

"Your attention is directed particularly to Section 13985 and Section 8821 R. S. Mo. 1939. There may be other sections which are also involved and undoubtedly the constitution itself is involved.

"This county runs a levy for county purposes in the amount of 35¢ on the \$100.00 valuation. How much of a levy can township boards make for incidental expenses of the township?

"What is the maximum levy which a township can run for road and bridge purposes?

"What is the maximum levy for all purposes that can be made by the township or for township purposes exclusive of county purposes?

"Would a levy made by the county for township purposes be legal and collectible if the township board had not previously complied with the provisions of Section 13985 supra, in making the estimate and account and filing same with the county clerk? Would failure to make and file such an account as is mentioned in Section 13985, supra, be jurisdictional so far as the county court's power to levy taxes for township purposes is concerned?

"These questions have presented themselves in this county and the statutes above mentioned are conflicting and contradictory of each other in their terms and no doubt the statutes may also be modified by the general provisions of the constitution. It is a question whether or not the total tax for ordinary expenses and road and bridge funds levied by the county plus that of the township may exceed 50¢ on the \$100 valuation. If that be true what levy could a township make for its incidental purposes plus special road and bridge purposes (exclusive of bonded indebtedness) if the court levied 50¢ for county purposes?"

We believe that a summary of the rights and powers of a county and township to levy taxes would clarify the procedure about which you ask and would facilitate the answering of the questions submitted in your request.

Article X, Section 11, of the Constitution of Missouri, provides in part as follows:

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

Article X, Section 22, of the Constitution of Missouri, provides:

"In addition to taxes authorized to be levied for county purposes under and by virtue of section 11, article X of the Constitution of this State, the county court in the several counties of this State not under township organization, and the township board of directors in the several counties under township organization, may, in their discretion, levy and collect, in the same manner as State and county taxes are collected, a special tax not exceeding twenty-five cents on each \$100 valuation, to be used for road and bridge purposes, but for no other purpose whatever; and the power hereby given said county courts and township boards is declared to be a discretionary power."

Section 8821, R. S. Mo. 1939, reads:

"The township board of directors of any township may, annually, in their discretion, at the same time and in the same manner as taxes are now required by law to be levied for county purposes, levy an annual tax in addition to those now authorized by law, in any amount not exceeding twenty-five cents on each one hundred dollars valuation on all property subject to taxation in such township, to be known

as a special road and bridge fund: Provided, that the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise, shall be placed to the order of the township road and bridge fund and be used in construction and maintenance of roads and improving or repairing any street in any incorporated city or village in the township, if said street shall form a part of a continuous highway of said township leading through such city or village."

Section 11047, R. S. Mo. 1939, provides:

"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."

Section 13985, R. S. Mo. 1939, reads as follows:

"The township board of directors shall make out an account of the amount of money necessary to defray the township expenses during the next ensuing year; said account shall be made out not more than sixty nor less than twenty days prior to the meeting of the county court at which the assessment for county purposes is made; said account shall be signed by the president of the board, and attested by the clerk, and filed with the clerk of the county court on or before the first day of said court, who shall cause the same to be placed upon the tax books of said township: Provided, that said expenses shall not, together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on the one hundred dollars valuation; and provided further, that in counties having a population exceeding thirty-five thousand inhabitants said tax shall not exceed for any one year fifteen cents on the hundred dollars valuation, and until the next decennial census shall have been taken, said population shall be determined by multiplying the aggregate number of votes cast for the respective candidates for president in 1888 in said county by five, and the product thus obtained shall determine as to such population."

From a reading of your request we deduce that Henry County falls in the bracket of counties having six million dollars or less property valuation, since you state that the maximum rate that can be charged there is fifty cents. Therefore, this opinion is written upon that basis.

Under Article X, Section 11, supra, the annual rate on property "for county purposes" cannot exceed fifty cents on the one hundred dollars valuation. It is well settled in Missouri that the term "for county purposes" includes not only the tax levied by the county but also the tax that is levied for the use of the township. As was said in State ex rel. Hirni v. Mo. Pac. R'y. Co., 123 Mo. 72, l. c. 80:

"It can not be doubted that the restrictions contained in this section were intended to apply to every county in the state, whatever its internal organization might be, and that all taxes of every kind and description levied for county purposes, it matters not by whom or how levied and the purposes for which levied, must be within the limits of the rates therein fixed; what is called a township tax, levied in a county under township organization, having been known and recognized from the beginning of the state government as within that class of purposes; the limitation of this section must apply to taxes levied for such purposes, the same as to those for any other county purpose, unless, elsewhere in the constitution is to be found some provision taking counties under township organization from the operation of its provisions."

This rule is succinctly stated in State ex rel. Conrad v. Piper, 214 Mo. 439, l. c. 445, as follows:

"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."

Therefore, when Article X, Section 11, supra, sets the maximum amount at fifty cents on the one hundred dollars

valuation, it means that only that amount may be levied for the entire expenses of both county and townships. Section 13985, supra, provides that the expenses of the township shall not exceed twenty cents on the one hundred dollars valuation, which expenses include the amount levied for road purposes and special bridge tax and those set forth in Section 13980, R. S. Mo. 1939, which are as follows:

- (1) The compensation of township officers for their services rendered in their respective townships;
- (2) Contingent expenses necessarily incurred for the use and benefit of the township;
- (3) The moneys authorized to be raised by the township board of directors for any purpose, for the use of the township.

However, it must be noted that the county has the primary right to levy any amount of taxes up to the maximum provided for by the Constitution for county expenses, and the right of the township to a levy of twenty cents on the one hundred dollars valuation is subservient to the prior right of the county. As was pointed out in the Piper Case, supra, (1. c. 445):

"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, \* \* \* "

Therefore, the county, in making its levy to obtain money sufficient to conduct the county affairs, may levy any

amount it wishes, even up to the maximum. The township, in putting in its account as to how much will be needed for township purposes, is limited to twenty per cent. If the combined estimates of the two subdivisions exceed the maximum amount provided for by the Constitution (which in this case is fifty cents), then Section 11047, supra, becomes controlling. That section, which is quoted above, provides that in such a case the county court shall apportion the tax "for county purposes," which is fifty cents, 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 shall go to the county organization, and twenty per cent of such taxes shall be apportioned to the township organization. Under this section if at any time the combined amount of revenue desired and estimated exceeds fifty cents, then the county shall receive forty cents and the township ten cents. However, we do not in this opinion pass upon the question as to what would be the apportionment if the county desired thirty-five cents and the township made an estimate of twenty cents. It will be noted that under this situation the combined amount would be fifty-five cents, and in the apportionment under Section 11047, supra, the township would only get ten cents, while if the township had estimated a fifteen cent rate on the one hundred dollars valuation, then it would receive the same. Such condition would seem inequitable and unjust because of the county receiving more than it desires and the township being cut below a figure to which it was legally entitled.

The question next arises whether a township, if it feels the need for more money for road purposes, can obtain the same. As stated in Section 13985, supra, the amount received by the township from the amount provided in Article X, Section 11, supra, includes moneys for road purposes and the special bridge tax. However, the people of Missouri, recognizing the fact that perhaps this amount of money for road purposes would not be sufficient, in 1908 amended the Constitution by placing therein Article X, Section 22, which provides for a special road and bridge tax not exceeding twenty-five cents on each one hundred dollars valuation. This tax may be levied in addition to other road and bridge taxes.

In State ex rel. Vaught v. A., T. & S. F. R'y Co., 270 Mo. 251, 265, this provision was before the court for

interpretation and Judge Brown said:

"The constitutional amendment permits the twenty-five cent levy 'in addition to taxes authorized to be levied for county purposes under and by virtue of section 11,' and the statutes enacted in pursuance of it contain the same authority. The amendment simply increases the amount which the county was authorized to levy under the provisions of section 11 from fifty cents to seventy-five cents on each one hundred dollars valuation, with the limitation that the entire additional levy must be made and used for road and bridge purposes and for no other purpose whatever. It imposes no duty upon the county court to appropriate any part of the levy for county purposes under section 11 to such uses, but left the power undisturbed."

To like effect is State ex rel. Kersey v. Pemiscot Land and Cooperage Co., 295 S. W. 78, 317 Mo. 41.

Therefore, the township board in its discretion may impose a tax up to twenty-five cents on the one hundred dollars valuation for the use of roads and bridges, which is in addition to that provided for in its estimate submitted to the county court.

Taking what has been said above as a guide, we will proceed to answer your questions in the order in which they are submitted.

## I

When the county runs a levy for county purposes in the amount of thirty-five cents on the one hundred dollars valuation, then the township board may ask for a levy of fifteen cents.

## II

The maximum levy which a township can make for road and bridge purposes is twenty cents, less the amount needed for township expenses provided for in Section 13980, supra. This, of course, depends upon the fact that the county has only estimated a thirty cent levy for county purposes. However, a township may in its discretion levy up to twenty-five cents on the one hundred dollars valuation under Section 22, supra, in addition to the other levy for road and bridge purposes.

## III

The maximum levy for all purposes that can be made by the township is twenty cents, provided that the county has not desired and estimated more than thirty cents on the one hundred dollars valuation. If the county has estimated more than thirty cents, then the township is subservient to and controlled by that amount.

## IV

If the county levied fifty cents, then the amount estimated by the township would make the total of the two over fifty cents and the funds would have to be apportioned, which would be forty cents to the county and ten cents to the township.

In answer to your question as to what effect the failure of the township board to make, sign and file an account for the amount of money necessary to defray the township expenses as provided for in Section 13985, supra, would have on the county court's power to levy taxes for township purposes, we refer you to the general rule as stated in 61 C. J., page 562, par. 688, which is as follows:

"where it is required by constitutional or statutory provision that

certain authorities of a political division or subdivision of the state shall make and file, with specified officers, a certificate, budget or estimate of the rate or amount of taxes which they require to be raised, as a condition precedent to the levy thereof, it is essential, before the tax can be lawfully levied, that there shall be a compliance with such requirement in every substantial particular."

This is the rule in Missouri, as is shown by the case of State ex rel. Wheat v. St. L. & S. F. R'y Co., 135 Mo. 77, which involved the validity of a levy made under a statute which required each city to certify to the county court a statement of the assessments and the rate of taxation levied by the city on all property for municipal purposes. The county court upon receipt of such certificate had levied the tax. The facts showed no such certificate was made by the city in this case. The court said (l. c. 87):

"In the absence of such certificate the county court was without authority to make the levy, for it is made one of the prerequisites of its power to do so by section 7731, supra. The power to tax is one of the prerogative rights of the state, and when the legislature grants that power to another tribunal on specific terms and conditions it can only be exercised in strict compliance therewith."

Therefore, we rule that if the township board did not make out an account, or if said account was not signed by the president of the board and attested by the clerk, or if said account was not filed with the clerk of the county

Hon. Mark Wilson

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court, then the county court was without power to levy any taxes for township purposes.

Respectfully submitted,

ARTHUR O'KEEFE  
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APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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