

TAXATION: SPECIAL LEVY
ORDERED BY THE CIRCUIT
COURT:

Special levy of taxes ordered
by the Circuit Court Judge are
subject to the limitation pre-
scribed by the constitution.

March 24, 1942

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Hon: L. Cunningham, Jr.
Prosecuting Attorney
Camden County, Mo.

Dear Sir:

This is in reply to your letter of recent date wherein you submit the question of whether or not the special levy of taxes to pay the levy ordered by the Circuit Court by the provisions of Section 11041 R. S. Mo., 1939, are subject to the limitation prescribed by the constitution.

The authority for such a levy is found in section 11041 R. S. Mo. 1939 which provides in part 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 of judge thereof, upon being satisfied of the necessity for 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: * * * * *

It will be noted that this law specifically provides that the court must be satisfied that the levy which he ordered made will not be in conflict with the Constitution of this state. The section of the Constitution which would limit such a levy, if it may be limited, is section 11, article 10, which 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; 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.* * * * *"

Your inquiry goes to the question of whether or not such a levy is limited by the foregoing provisions of the Constitution. In the case of *Brooks v. Schultz*, 178 Mo. 222, the question before the court was whether or not the "library tax" which the city was authorized to impose, was limited by the foregoing constitutional provisions. In that case the court said, l. c. 228:

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

The act authorizing the "library tax" was statutory and in the above case the court held that this tax was limited by the provisions of said section 11 of article 10 of the Constitution.

Said Section 11041 R. S. Mo., 1939 was before the Supreme Court in *State ex rel. Philpott, Collector of Revenue, v. St. Louis-San Francisco Railroad Company*, 247, S.W. 182. The constitutionality of the levy there involved was not in issue because it was for only thirty cents on the one hundred dollars assessed valuation. The question of whether or not this section was limited by what is now the provisions of section 11046 R. S. Mo., 1939, which prescribes a limit to which the county court may go in making a levy, was at issue. In that case the court said at l. c. 184:

"The revenue collected to pay past indebtedness must be applied to that purpose and may not be apportioned under section 12866 for current county expenditures. *State ex rel. v. Hortsman*, 149 Mo. 290, 297, 50 S. W. 811. Current

county expenditures, mean expenditures for the year for which the taxes were levied. State ex rel. V. Payne, 151 Mo. 663, 673, 52 S.W. 412. The only tax that a county court may levy on its own initiative is that for the payment of county current expenditures, as authorized by section 12859, R. S. No other tax for any purpose shall be assessed, levied or collected, except as authorized by section 12860. In this case the additional 10-cent levy was made by the order of the circuit judge in vacation.

"Respondent contends that section 12865, as amended by the act of 1921, places the limit on the tax that may be levied by the county court for county purposes in any one year. This section as amended has no relation to the special additional levy that may be ordered by the circuit court or judge in vacation under the authority of section 12860. These sections have different objects and purposes; that of one is to raise revenue to pay current expenses, that of the other is to pay past indebtedness. One is a general, the other a special, statute ingrafting an exception on the former. 'To the extent of any necessary repugnancy between them, the special will prevail over the general statute.' * * * *"

While this case is not authority on the question, it does shed some light on the purpose of the levy authorized by said section 11041, namely, to raise revenue to pay past indebtedness. Even if the provisions of said section 11041, did not specifically state that it is subject to the provisions of the Constitution, the same principle would apply because, we think the County Court or the Circuit Court in making the levies for current and past indebtednesses, is still subject to the constitutional provisions.

Hon. L. Cunningham, Jr.

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CONCLUSION

From the foregoing, it is therefore the opinion of this Department, that the levy authorized by Section 11041 R. S. Mo., 1939, must be made subject to the provisions of Section 11, Article 10 of the Constitution of Missouri, and that the total amount of the levy made by the County Court for current county expenses and the Circuit Court for past indebtedness, may not exceed the amount authorized by said Section 11 of Article 10 of the Constitution.

Respectfully submitted

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APPROVED:

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