

ELECTIONS:

BONDS:

TAXATION

ROADS AND BRIDGES:

County may levy full amount permitted by Sec. 11(b), Art. X Constitution for county purposes. County may call special election to make unlimited tax levy for bridge purposes, for not to exceed four years, by two-thirds vote at such election. County may become indebted and issue bonds up to 10% of assessed valuation of county inclusive of existing indebtedness for bridge purposes.

July 16, 1947

FILED

7/23

Honorable Emmett L. Bartram  
Prosecuting Attorney  
Nodaway County  
Maryville, Missouri

Dear Sir:

We are in receipt of your letter of recent date, requesting an official opinion of this department, and reading, in part, as follows:

"Nodaway County is a county having Township organization and with an assessed valuation of about \$40,000,000.00. Our county tax rate has been 38¢ for the last year and our Township tax has been running from a 20¢ levy for Polk Township, where Maryville is, to as high as 35¢ levy in some of the other townships; and then we have six or seven townships that have voted the additional 35¢ levy as provided in the 64th General Assembly House Bill.

"We have had, as you know, a lot of extra expense this year and will have more to maintain our bridges and roads in this county. Under the present tax rate of 38¢, our county cannot carry on its repair bills and the maintenance of the roads and bridges.

"I have seen Mr. Burns' opinion as to township levies, addressed to Honorable Edward W. Speiser at Keytesville, Missouri, dated April 18, 1947, but it does not cover our questions; and, I presume the same questions will be asked by the various County Courts of the twenty-four different counties having township organization. Our county, along

with these other counties, will want to know:

"1. If they can raise their levy without a special election to raise their levy from 38¢ to ?¢.

"2. Can the county call a special election and raise their rate of levy for a special tax for roads and bridges in excess to the 38¢ and the regular 10% raise that is given them under HCSHB 784?

"3. If they can call a special election to raise the tax rate for special road and bridge purposes, the amount that they can ask for that purpose in excess of the rates mentioned in question No. 2.

"4. If our county did have a special election and voted bonds to pay off this additional expenses, would the rate of levy to pay off the bonds have to bring their total levy within the amounts as stated in question No. 2?

"5. And can a county like Modaway County that is a third class county, vote bonds for this purpose.

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We note that in your request you ask if the county can raise the levy without a special election from 38¢ to ?¢. From the rest of your letter we presume that you are referring to the provision limiting a tax increase to ten per cent in any one year for county purposes, found in Section 11046 of House Bill No. 468 of the 63rd General Assembly, Laws of Missouri, 1945, page 1778. However, Section 11046 of House Bill No. 468 was repealed by House Bill No. 77 of the 64th General Assembly, and a new section enacted in lieu thereof which omitted the provision which limited the tax in any one year to one hundred ten per cent of that levied in the year before, and such bill contained an emergency clause and became effective May 19, 1947. Therefore, at the present time, a county may levy the full amount allowed by Section 11046 of House Bill No. 77 of the 64th General Assembly, in any year.

Your second question is in regard to the calling of a special election for raising the rate of levy for a special tax for

roads and bridges in excess of the 38¢ rate which you say was levied last year and the regular ten per cent raise authorized under House Bill No. 784 of the 63rd General Assembly. As we pointed out above, we assume that instead of referring to House Bill No. 784, you intended to refer to House Bill No. 468 of the 63rd General Assembly, and this opinion is being written under that assumption.

The question of whether or not the county can vote for a special tax for bridges depends on whether or not "respective purposes," as used in that part of Section 11 (c) of Article X of the Constitution reading as follows:

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; \* \* \*"

and under Section 11046 of House Bill No. 77 of the 64th General Assembly, refers to a tax which may be levied for bridges.

In the case of State ex rel. v. Wabash Ry., 3 S. W. (2d) 378, the Supreme Court held that a levy for roads and bridges under Section 10682, R. S. Mo. 1919 (Section 8526, R. S. Mo. 1939), was a tax for county purposes within the meaning of Section 12865, R. S. Mo. 1919 (Section 11046, R. S. Mo. 1939), which section provided that the county court should not levy in any one year taxes for county purposes which would raise more than one hundred ten per cent of the amount of taxes raised in the preceding year. At that time, Section 8526 provided that county courts should levy not more than 20¢ for road and bridge purposes. Such tax, in the case cited, was held to be a mandatory tax, and it was held to be part of the taxes for county purposes.

At the time the case above cited was decided, Section 22 of Article X of the Constitution of 1875, and Section 10683, R. S. Mo. 1919 (Section 8327, R. S. Mo. 1939), provided that a special tax in addition to the tax for county purposes could be levied for road and bridge purposes by the county court in counties not under township organization and by the township board in counties under township organization. It is to be noted that the special road and bridge taxes authorized by Section 12 of Article X of the present Constitution are in addition to the taxes for county purposes.

Section 8526, R. S. No. 1939, was repealed, effective July 1, 1946, by House Bill No. 784 of the 63rd General Assembly, found in Laws of Missouri, 1945, page 1478. The effect of the repeal of Section 8526 is to relieve the county court of the mandatory duty of making a levy for road and bridge purposes, but the mere repeal in no way affects the right of the county court to make a levy for bridges as part of the levy for county purposes.

Section 8825, R. S. No. 1939, provides as follows:

"Whenever it shall be necessary in any township to build a bridge, the cost of which shall exceed one hundred dollars, the township board of directors shall make out and cause to be presented to the county court a certified statement of the amount of money necessary for the construction thereof, and, if deemed proper, the said county court shall cause the bridge to be built by contract as provided by law."

Since the duty is placed on the county to build bridges in townships when the cost of constructing such bridges exceeds one hundred dollars, it is clear that such taxes for bridges may be levied by the county court and that such taxes are levied for a county purpose.

Section 8820 of House Bill No. 798 of the 63rd General Assembly, found in Laws of Missouri, 1945, page 1497, as amended by House Bill No. 42 of the 64th General Assembly, which bill will become effective ninety days after June 12, 1947, and which amends House Bill No. 798 only with regard to the payment to special road districts of tax money arising from property in such special road districts, provides that the county may retain 5¢ of the maximum 35¢ levy authorized by such section and by Section 12 of Article X of the Constitution, such levy being made by the township board in counties under township organization. The 5¢ that may be retained by the county is part of the special road and bridge tax, which is in addition to the tax for county purposes, and is not the exclusive tax levy from which the county in counties under township organization can obtain funds for bridges, but is in addition to the tax for county purposes which the county may levy.

We refer to the Debates of the Constitutional Convention at which the Constitution of 1945 was drafted with full knowledge of the rule which limits the reliance which may be placed on them. State ex rel. v. Osburn, 147 S. W. (2d) 1065. However,

we believe that it is significant that the debates show that in a discussion of Section 12 of Article X of the present Constitution, it was stated by Mr. Lindsay that an unlimited tax levy might be voted by the people under the provisions of Section 11 of Article X of the Constitution. In a discussion of Section 12 of Article X of the Constitution, the following appears at pages 5158-5159:

"MR. LINDSAY: Mr. Shepley, under Section 11 you have increased us from thirty-five cents to fifty cents.

"MR. SHEPLEY: Oh, I see. You are referring to that. I beg your pardon. I thought you were referring.....

"MR. LINDSAY (Interrupting): Then under Section 12 you have increased us twenty-five cents to thirty-five. We don't have any special road district so we are not concerned about the latter part of it.

"MR. SHEPLEY: I see.

"MR. LINDSAY: So that raises us from sixty cents to eighty-five cents. Now, I imagine Mr. Arnold over here, I think this is correct, isn't it, that if they need some additional funds above the twenty-five cents under Section 11 they can vote all they want?

"MR. SHEPLEY: If they have the special road district or the general road district.

"MR. LINDSAY: Well, under Section 11 it doesn't make any difference.

"MR. SHEPLEY: Special or general.

"MR. LINDSAY: They can do it anyway.

"MR. SHEPLEY: That's right.

"MR. LINDSAY: Fifty cents or a dollar if they need it."

There is no limit to the amount of the tax levy that can be voted, for not to exceed four years, by a two-thirds vote of

the people, under the provisions of Section 11046 of House Bill No. 77 of the 64th General Assembly.

Section 8606 of House Bill No. 752 of the 63rd General Assembly, Laws of Missouri, 1945, page 1477, provides as follows:

"The county courts of the counties of this state are hereby authorized to issue bonds for and on behalf of their respective counties for the construction, reconstruction, improvement, maintenance and repair of any and all public roads, highways, bridges and culverts within such county, including the payment of any cost, judgment and expense for property, or rights in property, acquired by purchase or eminent domain, as may be provided by law, in such amount and such manner as may be provided by the general law authorizing the issuance of bonds by counties. The proceeds of all bonds issued under the provisions of this section shall be paid into the county treasury where they shall be kept as a separate fund to be known as the 'Road Bond Construction Fund' and such proceeds shall be used only for the purpose mentioned herein. Such funds may be used in the construction, reconstruction, improvement, maintenance and repair of any street, avenue, road or alley in any incorporated city, town or village if such street, avenue, road or alley or any part thereof shall form a part of a continuous road, highway, bridge or culvert of said county leading into or through such city, town or village."

The general law providing for the issuance of bonds by counties is found in House Bill No. 749 of the 63rd General Assembly, Laws of Missouri, 1945, page 597. Section 3292 of such bill, enacted under the provisions of Section 26 (b) of Article VI of the Constitution of 1945, provides as follows:

"Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years; provided such indebtedness shall not exceed five per centum

of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

Section 3 of Article X of the Constitution of 1945 provides, in part, as follows:

"Taxes may be levied and collected for public purposes only, \* \* \* "

Since it is the duty of the county, under the provisions of Section 825, R. S. No. 1939, to build bridges costing over one hundred dollars in townships, it is clear that a bond issue for such purpose would be a bond issue for a public purpose.

Section 3293 of House Bill No. 749 of the 63rd General Assembly, which section was enacted under the provisions of Section 26 (c) of Article VI of the Constitution of 1945, provides as follows:

"Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an indebtedness for county purposes in addition to that authorized in Section 3292 not to exceed five per centum of the taxable tangible property shown as provided in Section 3292."

As pointed out, supra, "county purposes," as used in Section 11 of Article X of the Constitution, includes taxes which may be levied by the county court for bridges, and the term "county purposes," as used in Section 3293 of House Bill No. 749, authorizes a bond issue for an additional five per cent for bridge purposes.

Section 11 (e) of Article X of the Constitution of 1945 provides as follows:

"The foregoing limitations on rates shall not apply to taxes levied for the purpose of paying any bonded debt."

#### CONCLUSION

It is the opinion of this department that:

(1) The maximum tax levy allowed under Section 11046 of House Bill No. 77 of the 64th General Assembly may be levied

by the county court in any year.

(2) Under the provisions of Section 11046 of House Bill No. 77 of the 64th General Assembly, an unlimited tax levy may be voted by a two-thirds vote of the people voting thereon, for not to exceed four years, for bridge purposes.

(3) Nodaway County may vote to become indebted, for bridge purposes inclusive of existing indebtedness, to a maximum of ten per cent of the value of the taxable tangible property as shown by the last completed assessment for state and county purposes. Taxes to pay for such bonds are in addition to the taxes for county purposes listed in Section 11 (b) of Article X of the Constitution.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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