

TAXATION AND REVENUE: Counties may, by a two-third vote, levy a tax above constitutional limit for health purposes.

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Honorable Marshall Craig
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

We are in receipt of your recent request for an opinion, based on the following state of facts:

"At the regular November election, a separate ballot was placed before the voters on a proposition to vote an additional Tax for the DDT Program. A copy of the ballot and the publication is attached hereto. The proposition was voted 1274 and 327 against, so that it easily carried by more than two-third vote.

"I have a copy of your opinion dated November 14, 1946 written to J. B. Conran of New Madrid County concerning the legality of a levy ordered by the Circuit Court.

"In light of your opinion, our court would like to have your opinion concerning the legality of the levy voted in this county."

Your question requires an interpretation of Article X, Section 11(c), of the Constitution of Missouri 1945. This section embodies two distinct methods of increasing the tax levy, and for reference purposes we have divided same into Part 1 and Part 2, as follows:

Part 1. "Increase of Tax Rate by Popular Vote - Further Limitation by Law - Exceptions to Limitation. - 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; provided that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law;

Part 2. "and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

The courts of Missouri have long recognized and held that public health is a public (county) purpose for which tax money may be expended. In the case of *State ex rel. v. Piper*, 214 Mo. 439, l.c. 445, the Court defined the words "for county purposes" and said:

"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. Section 9284, Revised Statutes 1899, quotes those words 'for county purposes' and uses them in the same sense in which they are used in the Constitution. * * *"

In the case of *Board of Commissioners v. Peter*, 253 Mo. 520, the Court ruled that the erection of a county hospital was a public health measure and therefore a public purpose for which tax money could be used. At l.c. 532 the Court said:

"It is further argued that it violates section 3 of article 10, reading:
'Taxes may be levied and collected for public purposes only. * * * '

"(1) It is not apparent why the purpose to be subserved by the tax in question is not a public purpose within the intendment of section 3, supra. The evil in the mind of the Constitution maker and blazoned forth in his instrument was the danger of a misuse of the taxing power for private purposes, and we are not willing to hold that the statute comes within the mischief interdicted thereby. * * * "

We assume from the information at hand that the DDT Program is one of spraying, to prevent pestilence and disease caused by the floods of the Mississippi river, and for that reason we have quoted at some length from the case of *Morrison v. Morey*, 146 Mo. 543, because we believe it fully supports the contemplated tax expenditure. At l.c. 562, 563 and 564 the Court said:

" * * * It is also true that the police power of the State extends to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the State, and this includes the right to enact suitable regulations looking to the accomplishment of a public purpose and designed for the promotion of public interests. *Tiedeman's Limitations on Police Power, sec. 1 et seq.*; *Cooley's Const. Lim. (6 Ed.)*, p. 704 *et seq.* This power is universally recognized, and its application to any given law is the only question open to debate. The power to construct drains and sewers, to open and improve streets, to regulate the uses of private property so as to prevent nuisances, to establish fire limits in large and populous cities, to establish quarantine, to remove and isolate persons affected with smallpox

and other contagious diseases in order to stop the spread of disease, is all dependent upon the police power of the State, exercised for the benefit of the health and well being of the people. In every case there must be the impress of a public purpose upon the law to make it constitutional. It is not enough that private interests will be subserved, or that private property will be enhanced in value. There must be a public interest applicable to a community of persons to be benefited. The health of the people is the substrata upon which the prosperity of the State rests, and laws conducive to health have always been upheld. In this case the police power of the State is broad enough to authorize the law in question (Welty on Assessments, secs. 350, 351 and 352; Hagar v. Supervisors, 47 Cal. 233), and the case itself is a striking illustration of the impossibility of attaining the end in view by private consent or co-operation and of the necessity of the State lending its aid to the accomplishment of the purpose intended to be reached. Levees must be continuous to be effective. No man alone could accomplish any material good by constructing a levee in front of his own land, where his neighbors refused to do likewise. The levee must all be built at once or it will fall short of the beneficent purpose intended. The contrariety or selfishness of human nature makes it impossible to secure the co-operation of all persons whose concert of action is necessary to successfully cope with the common enemy of man, the floods. One or more persons in a district may be willing to incur the almost certainty of disease or even death, rather than meet the small expenditure necessary to prevent it by building a common levee, just as they might be willing to run the risk of fire by constructing a cheap wooden house in a populous neighborhood, or of drinking impure

well water, or of allowing nuisances and filth and disease-breeding agencies to remain on their premises. The law can not control such cases simply because the person offending is pursuing a course injurious to his own interests, but the law can control and regulate him if other persons are injuriously affected by his conduct, because such other persons can not peaceably control him themselves. This law would be unconstitutional if its only purpose and effect was to improve the value of the lands of the persons in the district, but such is not the only object of the law. We take judicial notice of the fact that overflows are followed by disease, resultant from the decaying deposits left by the water, and that such disease is not and can not be confined to a single family, but spreads among the people of the locality without any fault of theirs, and which they are powerless to prevent. This, then, is a proper case for governmental interference under the police power of the State, as much so as the construction of drains and sewers. Cooley's Const. Lim. (6 Ed.), p. 627."

It follows that public health, being a public purpose, is included in the taxes that may be increased by a vote as specified in Part 1 of Article X, Section 11(c) of the Constitution, supra.

You will also note that Part 1 provides the amount of the increase may be limited by law. We are unable to find any further limitation by the General Assembly. Section 11046, Mo. R.S.A., House Committee Substitute for House Bill No. 468, follows the constitutional provision, and provides:

"For county purposes the annual tax on property, * * * shall not exceed the rates herein specified: * * * Provided, further, that in any county the maximum rates of taxation as herein limited may be increased 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 of the county voting thereon shall vote therefor."

In reaching the conclusion that a county may increase its tax levy for health purposes above the constitutional limit by a vote, as provided in Part 1 of the constitutional provision, supra, we have considered Part 2, supra, as it might apply to Part 1.

By referring to the title of Section 11(c), Article X of the Constitution, supra, and the discussion and debates of the members of the Constitutional Convention, we have concluded that it has no reference or connection in any way with Part 1, but is an additional exception to the constitutional limit of a tax levy and is a further and distinct method of increasing the levy for health, etc., purposes. You will note the title provides "Exceptions to Limitation."

The following quotations from the record of the Debates of the Constitutional Convention clearly indicate that that body understood and intended that Section 11(c) should provide that taxes may be increased above the limit fixed by the Constitution for (1) all county or public purposes, which includes health, by a two-third vote of the people and (2) for health, etc., purposes by any method as may be authorized and prescribed by the General Assembly:

"MR. MOORE: Judge, I wanted to ask you this question. I am very heartily in favor of the principle of your amendment but I don't quite get it through my head, maybe it is a little thick, why we should strike out the words 'public purposes' and insert these specific items. Now, let me ask you this, did the Committee have in mind that the first part of this section, by a two-thirds vote, they could levy additional taxes within the limitations prescribed by the Legislature for any public purpose? Then under general law they could do this without a vote of anybody for these specific items.

"MR. MAYER: Yes, if the Legislature authorized it.

"MR. MOORE: Now, do you have enough specific items listed, that is the thing I am wondering?

"MR. MAYER: Well, we have I think, all of the specific items that were urged before the Convention as being those that should be put in. The reason these were not put in, we all felt that 'public purposes' covered it and the Committee thought that was too broad and took those words out and I reinserted these words.

"MR. MOORE: Well of course all of the public purposes would mean that the Legislature might levy cities without a vote of the people and levy a tax for any purpose that was public for building a building or any other public purpose and it was believed that that ought to come under a two-third vote.

"MR. MAYER: Thank you.

"MR. ALLAN: Mr. President, I desire to speak on Mr. Phillips' amendment. I was a member of this Committee and it was the unanimous consensus of the opinion of this Committee that ad-valorem taxes were fast becoming obsolete and a relic of barbarism, that modern taxation was attempting to get away from ad-valorem taxes, and yet this same Committee, not only proposes to take off the present constitutional limitations on these ad-valorem taxes; but in effect, invites the people and the Legislature itself to use those ad-valorem taxes and use that theory of taxation for these purposes, hospital and public health, and the purpose that Judge Mayer added by his amendment this morning and which I supported.

"MR. RIGHTER: The amendment offered by Mr. Allen and myself would exempt Kansas City from the effect of the proviso beginning at line 26 of Section 11 on page 6 of File 19. Now, as all of the delegates have undoubtedly noted, the section first sets forth the amount of taxes that is based on the hundred dollars valuation that municipalities, counties, and school districts and for purposes other than school district, local taxing units have a right to levy. But the proviso beginning at page 26 contains two separate ideas. The language from line 26 to line 32 provides in effect that any municipality, county or school district, by the vote of two-thirds of those voting on the subject, may increase any of the rates specified. For example, in the case of school district the rate specified is a dollar so that if a two-thirds vote could be secured authorizing such an increase, the rate could be increased to two dollars. As a matter of fact, theoretically, at least, it could be increased to ten dollars and twenty dollars. Of course, that would not be done. That is out of the question.

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"Well now, the second part of the proviso starts at the bottom of page 6 in line 32 and that provides for no vote by anybody. It simply provides that we authorized, by law, any municipality, county or other political subdivision may levy a rate of taxation on all property subject to its taxing power in excess of the rates herein limited for library, hospital, public health. I think the words 'other public purposes' were stricken out and 'public recreation' and 'museums' were inserted. So that under that proviso in any county or other school district or other taxing unit in this state, if the Legislature could be induced to pass a law authorizing it the taxes could be increased without limit.

"So that we are faced here with a fundamental question of public policy in this section 11. Do you want to put a ceiling on the power to tax as was done in 1875 or do you wish to have no ceiling at all?

* * * * *

"MR. RIGHTER: The provision in the first proviso, the provision of the first proviso, from lines 26 to 32 at the bottom of Page 6 are entirely independent of the proviso at the top of Page 7 and the Legislative assembly is not essentially concerned with the first proviso at all. People of the communities, I read this, can go to the polls and by a two-thirds vote of those voting, can increase the taxes of any of these taxing units indefinitely without the General Assembly doing a thing.

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"MR. MAYER: Mr. President, I hope this amendment of Mr. Phillips will not be adopted. These purposes for which the Legislature may authorize the issuance or the increase of the levy are all purposes in which the public are very deeply interested. They usually will not take a very large levy. It isn't as if they were going to build a lot of buildings and all that sort of thing. It seems to me that there is plenty of safeguard if the people elect their councils, elect their whole county courts, They can't do this except as authorized by the Legislature and under such limitations as the Legislature may prescribe. I don't see why we should require a two-thirds vote to increase a levy of millions say for public health or for a library. It seems to me we are going along in distrust of our local people when we do that. I hope the amendment will be defeated.

"MR. GARTEN: Mr. President, it occurs to me that this amendment is already cared

for by the first part of this because it says in the first part that a rate of taxation on any of these local purposes can be set by two-thirds vote, and then here we go on and say that a rate of taxation for libraries, hospitals, and etc., can be set by two-thirds vote. We will surely - well it seems to me the first part of this provision would cover the latter the way it is amended and if this is the purpose of Mr. Phillips, he would better attain it by striking out the last part of this section as something superfluous.

"PRESIDENT: Have you finished?"

"MR. GARTON: Yes.

"MR. SHELLEY: Mr. President, it occurs to me that this amendment should not be adopted, and if this should be adopted you would accomplish almost the opposite from what the Committee had in mind. You tell the people in the first proviso that if two-thirds of those voting at an election want to do so they can authorize for their respective purposes, an increased rate. Then you go in the next proviso and ask if Senator Phillips amendment should be adopted you say but, if it happens to be for these particularly desirable purposes, you can only do it if the General Assembly tells you that it may, and for that reason, I think it is most inadvisable and should not be adopted."

The above excerpts are just a few of the many in this record which conclusively support the interpretation that Section 11(c), of Article X of the Constitution, provides two distinct methods of increasing the levy.

We are unable to find any authorization by the Legislature that would permit the increase under Part 2 of the constitutional provision, and so held in the opinion rendered to Mr. J. V. Conran, Prosecuting Attorney of New Madrid County, mentioned in your request.

We have examined the ballot submitted and find that it states the period of time, rate and purpose of the increase, as provided in Part 1 of the constitutional provision, and believe same to be proper in form.

Conclusion.

It is, therefore, the opinion of this department that an increase of a tax levy above the limits fixed by the Constitution and law for public purposes (public health) is valid and constitutional when the increase has been voted by a two-thirds majority of the voters on a ballot submitting the rate and purpose of the increase for a period not to exceed four years.

Respectfully submitted,

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APPROVED:

J. F. TAYLOR
Attorney General

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