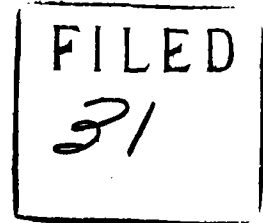


ELECTIONS: A petition presented to county court under pro-  
TAXATION: visions of Sec. 14185, Laws of 1943, p. 317, be-  
fore county court has set tax levy for county  
purposes, is of no effect, and county court has no authority to call  
such election. If county court does levy the constitutional limit  
for county purposes, no election can be held and no levy can be made  
under the provisions of Sec. 14185, Laws of 1943, p. 317.

March 24, 1947



Honorable W. C. Frank  
Prosecuting Attorney  
Adair County  
Kirksville, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"I would like an official opinion from your office in interpreting Section 14185, Laws of Missouri, 1943. We have a fair association in Adair County that has presented our County Court with a petition signed by the required number of tax payers, requesting that election be called as provided in this section of the statutes.

"Our County Court in setting up the budget, anticipated that it will take the full \$.50 limit for County purposes to pay the necessary expenses of running our County Government and when they meet in July to set the levy, it is their intention to set the same at \$.50.

"Query: Can this association force the County Court under this section to call this election before the court has made an order setting the levy for revenue purposes for the year 1947, or can they require the court to submit this proposition to the voters and in the event the same carries require the court to reduce their levy \$.10 for \$100 in order to stay within the constitutional limit?"

Honorable W. C. Frank

Section 14185, Laws of Missouri, 1943, page 317, provides, in part, as follows:

"In all counties of this state in which the constitutional limit is not levied for county purposes, it shall be the duty of the county court, upon the filing of a petition signed by not less than 300 resident taxpayers and qualified electors of such county, to call an election to submit to the qualified voters thereof, a special levy of not more than two mills on the dollar (\$1.00) valuation, which levy, together with all other levies for county purposes, shall not exceed the constitutional limit of levy for the county affected, for the purpose of encouraging, promoting and improving the livestock, poultry, agricultural, horticultural, mechanical fabrics and fine arts, products and articles of domestic industry, and the exhibition of such stock, poultry articles and commodities, at the district or county fair held in such county. If a majority of the voters voting at said election shall be in favor of such proposition, then it shall be the duty of the county court at its next regular term thereafter to make such levy, \* \* \* \*." (Emphasis ours.)

Section 11044 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly provides as follows:

"After the assessor's book of each county, except in the City of St. Louis, shall be corrected and adjusted according to law, but not later than September 1, of each year, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

The Supreme Court of Missouri, in the case of State v. Davis, 73 S. W. (2d) 406, said in regard to the meaning of the word "levy" as applied to taxes, at l. c. 407:

Honorable W. C. Frank

means the formal order, by the proper authority, declaring property at its assessed valuation, subject to taxation at a fixed rate. State ex rel. Hamilton v. Hannibal & St. J. Ry. Co., 113 Mo. 297, loc. cit. 307, 21 S. W. 14. \*\*\*"

Since Section 14185, Laws of Missouri, 1943, page 317, provides specifically that the election shall be called in counties "in which the constitutional limit is not levied for county purposes," it is clear that no petition for the election can have any effect until the county court has made its levy for county purposes as provided by Section 11044 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly.

Since this is true, the County Court of Adair County, under Section 11044 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly, has the power to fix the levy for the rate of taxes so as to raise the sum of money required for county purposes, and it is obvious that the election can be called under the provisions of Section 14185, Laws of Missouri, 1943, page 317, only if a tax rate less than the constitutional maximum has been levied. Until the tax rate for county purposes has been levied by the county court as provided in Section 11044 of House Committee Substitute for House Bill No. 468, it would be impossible for such rate to be known, and therefore it could not be known as to what tax rate, for the purposes specified in Section 14185, Laws of Missouri, 1943, page 317, could be levied in order not to exceed the maximum constitutional limit of tax rates.

Section 11 of Article X of the Constitution and Section 11046 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly provide that the maximum levy for county purposes for a county under three hundred million dollars valuation, which classification includes Adair County, shall not exceed fifty cents on the one hundred dollars, with the exception that such limit may be increased, for not to exceed four years, when the rate and purpose of the increase are approved by two-thirds of those voting at an election for such increase.

Obviously, the provision which authorizes the increase for not to exceed four years does not have any application to Section 14185, Laws of Missouri, 1943, page 317, because (1) it is specifically provided in such section that "which levy, together with all other levies for county purposes shall not exceed the constitutional limit of levy for the county affected," and (2) a

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majority vote only is required by Section 14185, Laws of Missouri, 1943, page 317, while a two-thirds vote is required by Section 11046 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly.

CONCLUSION

It is the opinion of this department that a petition presented to the County Court of Adair County before the County Court has set the tax levy for county purposes under the provisions of Section 11044 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly, is of no effect, and the County Court has no authority to call such election.

It is further the opinion of this department that if the County Court of Adair County levies a fifty cent rate for county purposes under the provisions of Section 11044 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly, no election can be called and no levy made under the provisions of Section 14185, Laws of Missouri, 1943, page 317.

Respectfully submitted,

C. B. Burns, Jr.  
Assistant Attorney General

Approved:

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J. E. Taylor  
Attorney General