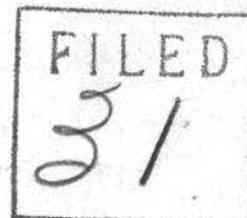


COUNTY COURTS: County court does not need to submit plans and specifications for manner of removal of a portion of a county building. The circuit judge of Adair county does not have the power to order an additional ten cent levy over and above the fifty cent levy allowed by law.

March 7, 1949



3-9
Mr. W. C. Frank
Prosecuting Attorney
Adair County
Kirksville, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you request an official opinion upon the following questions:

1). Must the county court of Adair county, at the time that it advertises for bids for the removal of the tower on the court house of Adair county, located in Kirksville, Missouri submit plans and specifications designating the manner in which the removal of the said tower shall be made?

2). Does the circuit judge of Adair county have the power to order, for the purpose of defraying the cost of the removal of the tower, referred to in question 1, an additional ten cent levy over and above the fifty cent levy allowed by law?

Section 13730, R. S. Mo. 1939, states:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

The above section has been sustained by the case of State ex rel. v. Bollinger, 219 Mo. 204, and by numerous subsequent cases.

Section 13723, R. S. Mo. 1939, states:

"When the ground for erecting any public building shall be designated, as aforesaid, the superintendent shall prepare and submit to the county court a plan of the building to be erected, the dimensions thereof, and the materials of which it is to be composed with an estimate of the probable cost thereof."

It will be noted from the above section that when a county court advertises for bids for the erection of county buildings, plans and specifications for the proposed buildings must also be submitted. However, there is nothing in Missouri law to indicate the necessity of submitting plans and specifications for the tearing down of a county building or a portion thereof. It is, therefore, the opinion of this office that the county court of Adair county, when it advertises for bids for the removal of the tower of the Adair county court house, need not submit plans and specifications indicating the manner of removal.

Your second question, quoted above, is:

"Does the circuit judge of Adair county have the power to order, for the purpose of defraying the cost of the removal of the tower, referred to in question 1, an additional ten cent levy over and above the fifty cent levy allowed by law?"

Section 11041, R. S. Mo. 1939, states:

"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 or 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: Provided, that no such order shall be modified, set aside or annulled, unless it shall appear to the satisfaction of such circuit court, or judge thereof, that the taxes so ordered to be assessed, levied and collected are not authorized by the Constitution and laws of this state, or unless it shall appear to said circuit court, or judge thereof, that the necessity for such other tax or taxes, or any part thereof, no longer exists."

In the case of State ex rel. Hill v. Wabash Railway Company, 169 Mo. 563, l.c. 577, this section was construed by the court as follows:

"It was held in the cases relied upon by plaintiff, viz., State ex rel. Brown v. Mo. Pac. Ry. Co., 92 Mo. 137; State ex rel. Givens v. Wabash St. L. P. Ry. Co., 97 Mo. 296; State ex rel. Hamilton v. H. & St. Joe Ry. Co., 113 Mo. 297; State ex rel. V. St. L. K. & N. W. Ry. Co., 130 Mo. 243; State ex rel. v. Bridge Co., 134 Mo. 339, and Andrew County ex rel. v. Schell, 135 Mo. 38, that a proceeding in conformity with section 7654, supra, was the proper course to pursue in order to require a county court to make a special levy for the purpose of paying outstanding and unpaid warrants, but it was not held in any of those cases that such a levy in excess of the constitutional limit would be valid, but it seems to have been taken for granted that it would be. Now, if under such circumstances, the county court had the power to make a special levy of twenty cents on the hundred dollars valuation of property in the county in addition to the levy of forty cents, the constitutional limit, it could of course upon the same theory and by the same authority levy fifty or one hundred per cent and thus ignore those wholesome provisions of our Constitution which were intended to protect

the property rights of the people, and to prevent its confiscation by an evasion of that instrument. That no such purpose was contemplated by the statute is indisputable, but what was meant thereby was that a special levy in addition to a general levy, when the latter does not come up to the constitutional limit, may be made for the purpose of paying past indebtedness of the county, provided it, including the general levy, or the levy for general purposes, does not exceed the constitutional limit."

It is, therefore, the opinion of this office that the answer to your second question is "No".

CONCLUSION

It is the opinion of this office that when the county court of Adair County advertises for bids to remove the tower of the court house of Adair county it need not submit plans and specifications indicating the manner of the removal thereof.

It is the further opinion of this office that the circuit judge of Adair county does not have the power to order an additional ten cent levy over and above the fifty cent levy allowed by law.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

HPW:mw