

CONSTITUTIONAL LAW:

The legislature may authorize <sup>a</sup> the county court to increase the tax levy for hospital purposes without a two-thirds vote of the people as provided by Section 11(c), Article X, Constitution of Missouri.

June 6, 1951

6-7-51

Senators John Hoshor and  
Leo J. Rozier  
Missouri Senate  
Capitol Building  
Jefferson City, Missouri



Dear Sirs:

Reference is made to your recent request for an opinion of this department which request reads as follows:

"Please find enclosed copy of proposed legislation which repeals and re-enacts section 205.200 and raises the ceiling on the amount that can be levied by hospital boards in counties in the state of Missouri.

"I wonder if you would be so kind as to look over this proposed law and inform us whether or not in your opinion it conforms with the Constitution of Missouri, Article 10 Section 11 (c).

"Some of the law makers are of the belief that this proposed legislation enables the county court to make this levy on certification of the hospital board without a vote of the people. The question now arises as to whether or not this levy can be levied without a vote of the people."

House Bill No. 229, the proposed legislation which you have referred to reads as follows:

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"Section 1. That section 205.200, RSMo 1949, be and the same is hereby repealed and that one new section be enacted in lieu thereof, to be known as section 205.200, and to read as follows:

"205.200. Except in counties operating under the charter form of government, the county court in any county wherein a public hospital shall have been established as provided in section 205.160 to 205.340, shall levy annually a rate of taxation on all property subject to its taxing powers in excess of the rates levied for other county purposes to defray the amount required for the maintenance and improvement of such public hospitals, as certified to it by the board of trustees of the hospital; the tax levied for such purpose shall not be in excess of twenty cents on the one hundred dollars assessed valuation. The funds arising from the tax levied for such purpose shall be used for the purpose for which the tax was levied and none other."

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 divided it into part one and part two as follows:

Part one:

"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 two:

"\* \* \*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."

After carefully considering the above constitutional provision, we believe that the obvious purpose of the provision is to provide two methods of increasing the tax levy limited by the constitution. One method being by a two-thirds vote of the qualified electors voting therefore for all county purposes, and that the tax levy as limited may be increased without a vote of the people for the specific purposes set forth in this provision.

By reference to the discussions and debates of the members of the Constitutional Convention, we believe that our conclusion is substantiated that part two has no reference or connection in any way with part one but is an additional exception to the constitutional limit of a tax levy and is a further and distinct method of increasing the tax levy for library, hospital, public health, recreational grounds and museum purposes.

The following quotations from the debates of the Constitutional convention clearly indicate that that body understood that Section 11(c), should provide that taxes should be increased above the limit fixed by the Constitution for (1) all county or public purposes by a two-thirds vote of the people and (2) for these specific purposes by any method as may be authorized and prescribed by state legislature.

"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-thirds vote.

"MR. MAYER: Thank you.

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"MR. ALLEN: 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.

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"MR. RIGHTER: The amendment offered by Mr. Allen any 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 proviso 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?

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"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 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.

"MR. PRESIDENT: Have you finished?

"MR. GARTEN: Yes.

"MR. SHEPLEY: Mr. President, it occurs to me that this amendment should not be adopted, and

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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."

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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.

Therefore, in view of the above interpretation of Section 11(c), Article X of the Missouri Constitution, we are of the opinion that House Bill No. 229, conforms with the Constitution by authorizing the county court to levy a tax which may be in excess of the constitutional limitation for hospital purposes.

CONCLUSION

Therefore, it is the opinion of this department that House Bill No. 229, which raises the ceiling on the amount that can be levied for hospital purposes conforms with Section 11(c), Article X, Constitution of Missouri, 1945, which authorizes the legislature to enact a provision granting the county court the power to increase the tax levy without a two-thirds vote of the people when the amount of the increase is also fixed by the legislature.

Respectfully submitted,

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APPROVED:

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