

TAXATION: Election to increase tax rate for purposes of  
MUNICIPALITIES: increasing wages of police and fire departments  
is an election to increase rate for general  
municipal purposes and not for public health  
purposes. Constitutional limitations of 2/3  
majority and four-year increase limitations  
therefor applies.

April 19, 1951

4-24-51

Honorable Wm. O. Sawyers  
Senator, 34th District  
Missouri Senate  
Jefferson City, Missouri.



Dear Sir:

We are in receipt of your recent letter requesting an official opinion of this department, which letter reads in part as follows:

"The Police Department and Fire Department of St. Joseph, Missouri, a city of the first class, desire to avoid any constitutional or statutory necessity of promoting another rate increase election establishing for them supplemental money for livable wages every four years, as was done in 1946 and also in 1950 general city elections. The personnel of these indispensable city departments are seeking a legal method of fixing these periodic salary increases at the rate voted at an election, so that such rate once voted will be fixed continuously and earmarked solely for Police Department and Fire Department salaries, fixed and to continue until such time as the people vote to abolish, decrease or increase such fixed and earmarked rate.

\* \* \* \* \*

"St. Joseph, Missouri, a city of the first class, voted by two-thirds majority vote at a general election of April 17, 1950, to increase fifteen cents on the one hundred dollar valuation an additional levy for general municipal purposes, specifying by ordinance that if the people

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vote the increase the money would be used to supplement salaries of the Police Department, Fire Department and City Officials. The people voted the increase. Since the election the funds from this fifteen cent rate are used for the three purposes specified by the city ordinance, and no other purposes. The fifteen cent rate is within the thirty cent maximum limitation of both Sections 93.085 and 93.090, Supra.

"Question: Could the election stated in the above paragraph providing extra money for the specified three purposes, be legally considered in full compliance with the provisions of Section 93.090 RSMo 1949, and thereby preclude the necessity of another election in 1954 to supplement money payable to the personnel of the Police and Fire Department as wages.

"Question: If your answer to the above question is 'no', then I ask, would it be legal under the Missouri Constitution Article 10, Section 11(c) and Section 93.090 RSMo 1949, for an election to be held in 1954 general election to increase the rate within the thirty cent maximum limitation, for public health purposes, as that language is therein used, with the electors on their ballot voting that the sole and only use of the funds, if the rate be voted by a majority vote, would be to earmark such funds for supplemental wages to the personnel of the Police Department and the Fire Department, such rate to continue until such time as the electors at a subsequent election by majority vote decide to abate, increase or decrease such rate."

Section 11(b), Article X, Constitution of Missouri, 1945, provides for a maximum annual rate of taxation which may be

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imposed by municipalities, which maximum rate is "one dollar on the hundred dollars assessed valuation."

Section 11(c), Article X, Constitution of Missouri, 1945, as amended on November 7, 1950, provides for an increase of the tax rate by popular vote 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; \* \* \* provided that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; 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 City of St. Joseph, Missouri is a city of the first class. It is therefore governed by Section 73.110(3), RSMo 1949, which provides that the mayor and common council may "levy and collect a general tax of not exceeding one per cent for each fiscal year."

Under the constitutional authority of Section 11(c), supra, the legislature has also provided by Section 93.085, RSMo 1949, that:

"The rate and limitation fixed and prescribed in subdivision (3) of section 73.110, RSMo 1949, is the maximum rate a common council of any city of the first class shall have the power to levy for general municipal purposes; provided, however, that the rate and limitation

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fixed and prescribed for in said subdivision (3) for general municipal purposes may, in addition to the aforesaid rate and purposes of increase which may be voted by city ordinance, be further increased for general municipal purposes for a period not to exceed four years at any one time when such rate and purpose of increase are submitted to a vote of the qualified electors within such cities, and two-thirds of the qualified electors voting thereon shall vote therefor, but such increase so voted shall be limited to a maximum rate of taxation not to exceed thirty cents on the one hundred dollars assessed valuation upon all property subject to their taxing powers."

The legislature has also provided for a further increase in the rate of taxation in such cities for library, hospital, public health, recreation grounds, and museum purposes by section 93.090, RSMo 1949, which section reads in part as follows:

"1. In addition to the levies as provided for in section 93.085 all cities of the first class are hereby authorized to levy annually not to exceed thirty cents in the aggregate on the one hundred dollars assessed valuation upon all property subject to its taxing powers for any one or more of the following purposes: Library, hospital, public health, recreation grounds and museum purposes, when such rate and purpose of increase are submitted to a vote of the qualified electors within such cities and a majority voting thereon shall vote therefor."

As we understand the situation, it has been necessary in the City of St. Joseph to hold an election in accordance with the provisions of Section 93.085, supra, in order to provide for an increase in the wages of the police and fire departments of the City of St. Joseph. The instant inquiry is prompted by a desire to authorize such increase by utilizing the provisions

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of Section 93.090, supra. Thereby, a simple, rather than a two-thirds, majority at the election would be required to obtain the increased rate and such authorization, once obtained by such election, would not necessarily have to be voted on every four years.

The question, therefore, is whether or not an election to increase the rate of taxation for the purpose of increasing the wages of the members of the police and fire departments is an election to increase the taxation rate for general municipal purposes or whether such election can be considered an election to increase the rate for one of the five special purposes enumerated in Section 11(c) and 93.090, supra.

The election under consideration can undoubtedly be considered to be for general municipal purposes. The five special purposes for which the rate of taxation may be increased under authority and in accordance with Section 93.090, are "library, hospital, public health, recreation grounds, and museum purposes." In the present instance the only purpose under which the increase in the wages of the members of the police and fire departments might possibly fall is for public health purposes. The Supreme Court of Missouri has defined public health in the case of *State ex rel. v. Becker*, 233 S.W. 641, 1.c. 649, 289 Mo. 660, as follows:

"\* \* \*By the 'public health' is meant the wholesome sanitary condition of the community at large. 1 Bl. Com. 122; Anderson's Law Dict."

Regarding the purpose of a police department, we find the following in *State v. Edwards*, 106 Pacific 703, 1.c. 704, 40 Mont. 313:

"\* \* \*The police force of a city is the body of men appointed to preserve the peace and good order of the city. \* \* \*"

and in *City of Phoenix v. Yates*, 208 Pacific (2d) 1147, 1.c. 1151, 69 Ariz. 68, firemen were defined as follows:

"\* \* \*In 36 C.J.S., page 809, firemen are defined 'those whose duty is to extinguish fires and to protect property and life therefrom. \* \* \*'"

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The Supreme Court of the State of Missouri has stated in the case of King v. Priest, 206 S.W. (2d) 547, l.c. 555, 357 Mo. 68, that:

"In Carter v. Thompson, supra, 164 Va. 312, 180 S.E. 410, 412, the court said: 'Police and fire departments are in a class apart. Both are at times charged with the preservation of public order, and for manifold reasons they owe to the public their undivided allegiance.\* \* \*'"

Therefore, we find that while the duties of police and fire departments may be such that they occasionally and indirectly aid and further the sanitary conditions of the community, the primary purpose and reason for their existence is the preservation of peace and public order and protection of life and property. In view of this we are of the opinion that an election to increase the rate of taxation for the purpose of increasing the wages of the members of the police and fire departments cannot be considered an election to increase the rate of taxation for public health purposes, but rather such would be an election to increase the tax rate for general municipal purposes. Such an election can only be held under authority of Section 11(c) of Article X, Constitution of Missouri, 1945, and Section 93.085, RSMo 1949, which sections plainly provide that a two-thirds majority of the qualified electors voting thereon is necessary to authorize such increase and that such increase shall be authorized for not to exceed four years.

#### CONCLUSION

It is therefore the opinion of this department that an election in a city of the first class to increase the rate of taxation for the purpose of increasing the wages of the members of the police and fire departments is an election to increase the rate of taxation for general municipal purposes. At such election a two-thirds majority of the qualified electors voting thereon is necessary to authorize such increase and such increase can only be authorized for not to exceed four years.

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It is further our opinion that such an election cannot be considered an election to increase the rate of taxation for public health purposes, and therefore cannot be held under the provisions of Section 93.090, RSMo 1949.

Respectfully submitted,

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APPROVED:

  
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