

PUBLIC LIBRARIES: Sections 93.⁴³⁵ and 182.140, RSMo 1949, em-
SECOND CLASS CITIES: power a city of the second class to levy a
STATE AID: library tax according to procedure of each
TAXATION: section and that former section does not
supersede latter, as both are in effect. A
second class city, in order for its public library to be qualified
for state aid authorized by Par. 2, 181.060 RSMo 1949, must levy
a library tax under the provisions of either or both Sections
93.435 and 182.140 RSMo 1949. The tax rate must be equal to at
least one half maximum provided by both Sections, or tax income
must equal one dollar per capita for previous year according to
publication of latest federal census.

February 16, 1954

Honorable Paxton P. Price
State Librarian
Missouri State Library
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for
an official opinion of this department which reads as follows:

"This office would appreciate re-
ceiving answers to several legal
questions relating to the authority
and procedure of second class cities
in levying public library taxes.

"1. Does the authority granted to
second class cities in Section 93.435
R.S. Mo. 1949 supercede the procedure
authorized for setting library tax rates
in Section 182.140, R. S. Mo. 1949?

"2. Must a second class city levy
library taxes according to the author-
ity granted in Section 182.140 or Section
93.435, R.S. Mo 1949, in order for it to
qualify for state aid grants authorized
in Section 181.060, par. 2, R.S. Mo 1949?

"3. Does a second class city have the
authority to raise or set its library
tax rate by any other procedure than
is authorized in Section 182.140, R.S.
Mo. 1949?"



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Section 182.140, RSMo 1949 referred to above reads as follows:

"When one hundred taxpaying voters of any incorporated city shall petition the mayor and common council asking that an annual tax be levied for the establishment and maintenance of a free public library and in such incorporated city, and shall specify in their petition a rate of taxation, not to exceed two mills on the dollar annually, and in cities of over one hundred thousand inhabitants not to exceed two-fifths of one mill annually on all the taxable property in the city, such mayor and common council shall direct the proper officer to give notice in his next legal notice of the annual election, or special election, which may be called for the purpose of voting on such question, that at such election every voter may vote

"For a _____ mill tax for a free public library,'

or

"Against a _____ mill tax for a free public library,'

specifying in such notice the rate of taxation mentioned in said petition; and if the majority of votes cast on such proposition shall be 'for the tax for the free public library,' the tax specified in such notice shall be levied and collected in like manner with other general taxes of such incorporated city, and shall be known as 'The Library Fund;' provided, that such tax shall cease in case the legal voters of any such incorporated city shall so determine by a majority vote at any annual election held therein."

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Section 93.435 RSMo 1949, also referred to above, reads as follows:

"1. The foregoing rate and limits fixed and prescribed in subdivision (2) of section 75.110 is the maximum rate the city council of any city of the second class shall have the power to levy for general municipal purposes; provided, however, that such city council may by ordinance levy and impose annually for general municipal purposes upon all property subject to its taxing powers a rate in excess of the rate and limits fixed and prescribed in said subdivision (2) but not to exceed in the aggregate forty cents on the one hundred dollars assessed valuation for any one or more of the following purposes, to wit: Library, hospital, public health, recreation grounds, and museum purposes; provided, however, that the rate and limitation fixed and prescribed for in said subdivision (2) 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 such 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 one hundred dollars assessed valuation.

"2. The city council of any such cities is hereby empowered to call and conduct a special election under the laws governing such elections as herein contemplated and to submit thereat a proposition for increase of levy when in the opinion of such city council the necessity therefor arises, and may submit any such proposition at either a special or regular election and such proposition shall be submitted by such city council when petitioned therefor by qualified electors equaling in number five per cent or more of the qualified electors of such cities

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voting for mayor in the last city election at which a mayor was elected.

"3. The ballots shall be in substantially the following form:

() For cent increase in tax levy on one hundred dollars valuation for general municipal purposes for . . . years.

() Against . . . cent increase in tax levy on one hundred dollars valuation for general municipal purposes for . . . years.

(Place an 'X' in the square opposite the one for which you wish to vote.)

"4. If such increase in levy shall be voted, then such increased levy shall be effective for the number of years designated, and no longer, but such cities through their city councils may submit any such proposal for continuing such increase of levy at any time for like periods not to exceed four years each."

Section 182.140 supra, provides a method by which at least one hundred taxpaying voters may petition the mayor and common council of any incorporated city for the levy of an annual tax, the proceeds of which may be used to establish and maintain a public library. As we construe the section, the legislative intent was that a library could be established and maintained under authority of this section, but that the method thus provided was never intended to be an exclusive one for levying a library tax.

Section 75.110, RSMo 1949, enumerates the powers of cities of the second class and also some limitations upon such powers, among which is that found in subdivision 2 of said section, prohibiting said cities from levying a general tax annually above the maximum rate specified therein. Said subsection reads as follows:

"(2) To levy and collect a general tax of not exceeding one per cent for each fiscal year upon all property in the city liable to taxation for state purposes and not by general law exempt

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from municipal taxation. The fiscal year shall commence on the first day of January of each year."

Paragraph 1, Section 93.435 supra, empowers the council of a second class city by ordinance to levy and impose an annual tax for general municipal purposes of not to exceed forty cents on the one hundred dollars assessed valuation for the purposes mentioned, including that for a public library. Said tax shall be in addition to the general tax rate of one dollar on the one hundred dollars assessed valuation authorized by subdivision 2, Section 75.110 supra.

Said paragraph 1, Section 93.435 supra, further provides that the tax authorized by subdivision 2 for general municipal purposes may, in addition to the tax rate and purposes provided (in the first part of the paragraph) when voted by city ordinance be further increased for a period of not to exceed four years for any one time, when submitted to the qualified voters at a special or regular election, at which election two thirds of the votes cast are for the increase in the tax rate. The maximum rate in such instance shall not exceed thirty cents on the one hundred dollars assessed valuation, and it is noted that the proceeds of the tax are to be used for general municipal purposes. Since no reference is made either expressly or by implication to the use of such tax proceeds for library purposes, it is believed that the legislative intent was that the tax was not to be a library tax, nor the proceeds of same are not to be used for that purpose. Consequently, this portion of Section 93.435, supra, has no reference to a library tax. It is our thought that that portion of paragraph 1, Section 93.435 supra, making a specific reference to a tax for library purposes is the only authority under the provisions of this section for levying a library tax, and that such tax rate shall not exceed the maximum specified, that is, forty cents on the one hundred dollars assessed valuation.

In answer to your first inquiry, it is our thought that the authority granted to cities of the second class under the provisions of Section 93.435 RSMo 1949, prescribing the procedure for fixing the library tax rate does not supersede that granted to them under the provisions of Section 182.140 RSMo 1949, but that both sections are in effect.

We understand the second inquiry in effect to be whether or not the library tax of a second class city must be levied, and the rate fixed according to the provisions of Section 93.435 supra,

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or Section 182.140 supra, in order for the library of such city to be qualified for state aid under the provisions of paragraph 2, Section 181.060 supra, which reads as follows:

"2. At least fifty per cent of the moneys appropriated for state aid to public libraries shall be apportioned to all public libraries established and maintained under the provisions of the library laws or other laws of the state relating to libraries. The allocation of such moneys shall be based on an equal per capita rate for the population of each city, village, town, township, school district, county, or regional library district in which any such library is or may be established, in proportion to the population according to the latest federal census of such cities, villages, towns, townships, school districts, county or regional library districts maintaining tax supported public libraries; provided, that no grant shall be made to any public library if the rate of tax or the appropriation for said library should be decreased below the rate in force at the time of the enactment of this chapter and provided further after January 1, 1949, grants shall be made to any public library, according to two alternate standards:

- (1) To any public library in which the tax rate is one-half or more of the maximum by law; or
- (2) To any public library for which the tax income yields one dollar or more per capita for the previous year according to the population of the latest federal census."

In our discussion of the first inquiry, and in answer to same, we gave it as our opinion that Section 93.435 did not supersede Section 182.140, but that both sections are in effect. Applying the principles underlying such opinion to the second inquiry, we shall endeavor in our further discussion to show that a tax shall be levied under either or both section and that the

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rates shall be at least one half the maximum rate provided by both so that the library may qualify for state aid grants under the provisions of Section 181.060 supra.

It is presumed that the general assembly knew the provisions of Sections 93.435 and 182.140, and that each section provides for a maximum rate in a different amount. It will be recalled that state aid shall be given to those libraries (Par. 2, Section 181.060) when, "the tax rate is one-half or more of the maximum (provided) by law, or * * * the tax income yields one dollar or more per capita for the previous year according to the population of the latest federal census." (Underscoring ours)

Upon a careful examination of this portion of the statute we are unable to find any indication of a legislative intent that state aid is to be given only to those libraries when the tax is levied under a certain section of the statutes to the exclusion of all other sections on the same subject. Rather it appears to be the legislative intent that the tax levied shall be at least one half the maximum rate provided by law, and which we construe to mean all laws. Sections 93.435 and 182.140 are the only ones which specifically prescribe the maximum library tax rate, and we construe said Par. 2, Section 181.060 supra, in this particular to mean that those libraries are entitled to state aid when the library tax has been levied under the provisions of either or both of Sections 93.435 and 182.140 and the rate is equal to at least one half the maximum provided by both sections, or the income from the library tax yields one dollar or more per capita for the previous year according to the population of the latest federal census.

It will be recalled that Section 93.435 supra, provides for a maximum tax rate of not more than forty cents (in the aggregate) on the one hundred dollar assessed valuation for one or more of the five purposes mentioned, including that for a public library.

Therefore, in answer to the second inquiry, it is our thought that a second class city must levy library taxes according to the provisions of either or both of Sections 93.435 RSMo 1949, and 182.140 RSMo 1949, and the tax rates levied must be at least one half the maximum provided by both sections in order for the public library to qualify for state aid grants as provided by Par. 2, Section 181.060, RSMo 1949.

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For the reasons given above and in answer to the third inquiry it is our thought that a second class city must fix its library tax rate according to the procedure provided by either or both of Sections 93.435 RSMo 1949, and 182.140 RSMo 1949.

CONCLUSION

It is the opinion of this department:

1. Sections 93.435 and 182.140 RSMo 1949, each empowers a city of the second class to levy a library tax in accordance with the procedure prescribed by each section, and that the former section does not supersede the *later*, as both sections are in effect.

2. A city of the second class, in order for its public library to be qualified for state aid grants authorized by Par. 2, Section 181.060, RSMo 1949, must levy a library tax under the provisions of either or both of Sections 93.435 and 182.140 RSMo 1949, and the tax rate must be at least one-half the maximum provided by both sections, or the tax income must be equal to one dollar per capita for the previous year, according to the population of the latest federal census.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

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