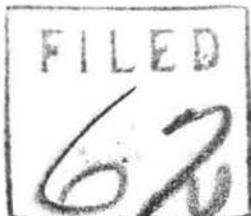


TAXATION:  
MAXIMUM ANNUAL TAX  
RATE FOR MUNICIPAL AND  
SPECIAL PURPOSES BY  
ALDERMEN:  
FOURTH CLASS CITIES:



Maximum annual tax rate for general municipal purposes by aldermen of fourth class city without vote of qualified electors authorizing greater rate, is seventy-five cents on one hundred dollars assessed valuation, as provided by Sec. 94.250 RSMo 1949, plus annual tax rate of not exceeding twenty cents on one hundred dollars assessed valuation for any special purpose provided by said Sec. 2, Section 94.260 RSMo 1949. Maximum annual rate for general and special purposes combined to be levied by aldermen is ninety-five cents on one hundred dollars assessed valuation.

March 20, 1957

Honorable John E. Mills  
Representative, Ralls County  
House of Representatives  
Capitol Building  
Jefferson City, Missouri

Dear Mr. Mills:

This department is in receipt of your recent request for our legal opinion reading as follows:

"Please furnish me with an opinion stating the legal limit of a tax levy which may be made by a city council of a fourth class city without the vote of the people."

Section 11(a), Art. X, Constitution of Missouri, 1945, authorizes counties and other political subdivisions of the state to levy taxes on all property subject to their taxing power, and reads as follows:

"Taxes may be levied by counties and other political subdivisions on all property subject to their taxing power, but the assessed valuation therefor in such other political subdivisions shall not exceed the assessed valuation of the same property for state and county purposes."

Section 11(b), Art. X, Constitution of Missouri, 1945, refers to the preceding section, and provides a limitation on local tax rates. Said section reads in part as follows:

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" \* \* \*

"For municipalities - one dollar on the hundred dollars assessed valuation;"

Section 11(c), Art. X, Constitution of Missouri, 1945, provides how the tax rate for municipalities may be increased above the maximum given in the preceding section, and reads as follows:

"Increase of tax rate by popular vote - further limitation by law - exceptions to limitation. - 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."

Section 94.200 RSMo 1949, requires the board of aldermen of a fourth class city to provide for the levy and collection of taxes, and reads as follows:

"The board of aldermen shall, from time to time, provide by ordinance for the levy and collection of all taxes, licenses, wharfage and other duties not herein enumerated, and for neglect or refusal to pay the same, shall fix such penalties as are now or may hereafter be authorized by law or ordinance."

Section 94.210 RSMo 1949, provides that the board of aldermen of a fourth class city shall fix the annual rate of tax levy, and reads as follows:

"The board of aldermen shall, within a reasonable time after the assessor's books of each year are returned, ascertain the amount of money to be raised thereon for general and other purposes, and fix the annual rate of levy therefor by ordinance."

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Among other matters, Section 94.250 RSMo 1949, specifies the maximum annual rate of taxation that may be levied by the board of aldermen of a fourth class city. Said section reads in part as follows:

"All cities of the fourth class in this state may by city ordinance levy and impose annually for municipal purposes upon all subjects and objects of taxation within such cities a tax which shall not exceed the maximum rate of seventy-five cents on the one hundred dollars assessed valuation: \* \* \*."

Section 94.260, RSMo 1949, reads as follows:

"Levy for special purposes - maximum amount of levy. - - In addition to the levy aforesaid for general municipal purposes, all cities of the fourth class are hereby authorized to levy annually not to exceed the following rates of taxation on all property subject to its taxing powers for the following special purposes:

"(1) For library purposes in the manner and at the rate authorized under the provisions of sections 182.140 to 182.300, RSMo 1949;

"(2) For hospitals, public health, and museum purposes, twenty cents on the one hundred dollars assessed valuation; and

"(3) For recreation grounds in the manner and at the rate authorized under the provisions of sections 90.500 to 90.570, RSMo 1949. L. 1945, p. 1280 (Sec. 709a).

Section 11(b), Art. X, supra, sets out the maximum tax rate of municipalities for general municipal purposes at one dollar on the one hundred dollars assessed valuation, while Section 11(c), Art. X, supra, states that the tax rates herein fixed may be further limited by law, and also the tax rates herein fixed may be further increased for the special purposes mentioned, when authorized and within the limits fixed by law.

It is believed that a fourth class city could not levy a tax for general municipal purposes, and for the special purposes under authority of the two constitutional provisions, but that it could levy those taxes and at the rates set out by any statutes enacted to implement said constitutional provisions. This is true because the power to tax is one

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exclusively belonging to the General Assembly. However, such power may be partially delegated to a municipality when any statutes granting a portion of that power to municipalities have been enacted by the lawmakers.

In support of our contention we call attention to the case of *Emerson v. Mound City*, 335 Mo. 702, in which this principle of law was upheld, and at l.c. 717-719 the court said:

"This leads us to observe that cities and other like municipal corporations do not derive their power and authority to levy taxes for municipal purposes directly from the Constitution. The power to levy and collect taxes is a legislative power (61 C.J. 552 and 554) vested by the Constitution in the General Assembly, popularly called the Legislature. The State Constitution, other than vesting all legislative power in the Legislature, only limits the taxing power which the Legislature may vest in municipal corporations as branches of the sovereign governing power. Cities and like municipal corporations have no inherent power to levy and collect taxes, but derive their powers in that respect from the law-making power. In 6 *McQuillin Municipal Corporations* (2 Ed.), section 2523, page 275, the law is stated thus: 'The taxing power belongs alone to sovereignty. No such power inheres in municipal corporations. This principle is universally recognized. Therefore as municipal corporations have no inherent power of taxation, consequently they possess only such power in respect thereto which has been granted to them by the Constitution or the statutes.

\* \* \*

"In *State ex rel. Sedalia v. Weinrich*, supra, the court said: 'It was held in *State ex rel. v. Van Every*, 75 Mo. l.c. 537, that the limitations upon the taxing power of cities found in Section 11, Article X, of the Constitution are self-enforcing, but that the sections conferred upon a city no power to tax, that such power is derived "from acts of the General Assembly and not directly from the constitutional provision we are considering." . . . But the amount of the levy for current expenses cannot exceed the levy which is authorized by the Legislature,

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if the doctrine of the Van Every case is sound. That doctrine was unanimously reannounced in Brooks v. Schultz, 178 Mo. 1.c. 227.'

"The Legislature has power to still further reduce and to restrict the rates of taxation specified as maximum rates by Section 11, Article X, but not to increase same in any manner or for any purpose (State ex rel. Johnson v. A. T. & S. F. Ry Co., 310 Mo. 587, 594, 275 S.W. 932), and it may direct and compel such city to use a designated part of its annual revenues for a designated purpose for which the city receives a special benefit (State ex rel. Hawes v. Mason, 153 Mo. 23, 54 S.W. 524; State ex rel. Reynolds v. Jost, 265 Mo. 51, 175 S.W. 591), but that does not give the city the power to levy a tax in excess of the constitutional limitation. (Strother v. Kansas City, 283 Mo. 293, 223 S.W. 419; State ex rel. Zoological Board v. St. Louis, 318 Mo. 910, 1 S.W. (2d) 1020.)"

From the doctrine enunciated in this case it is obvious that the General Assembly was authorized by the Constitution to enact Section 94.250, supra, fixing the maximum tax rate which can be levied by the board of aldermen of a fourth class city by ordinance, i.e., without being first authorized by the qualified voters. The maximum tax rate stated therein is seventy-five cents on the one hundred dollars assessed valuation for general municipal purposes, and is well under the maximum provided by Sec. 11(b), Art. X, of the Constitution. Section 94.250, supra, further provides a method by which the annual tax rate for municipal purposes, as therein specified, can be increased above said maximum, when the proposition to increase the tax, together with the proposed new rate and proposition is submitted to the voters at an election, and also when two-thirds of those voting at the election vote in favor of such proposition.

Subsection 2, Section 94.260, supra, authorizes fourth class cities to increase the annual tax levy in addition to that for general municipal purposes, not exceeding twenty cents on the one hundred dollars assessed valuation, for any of the special purposes mentioned therein. Section 94.260, supra, does not provide that the increased tax rate for the special purposes referred to in subsection 2 is required to be authorized by a majority of the qualified voters of the city. We are unable to find any other statute which makes this requirement, and it is believed that such increased tax rate, for any of the special purposes mentioned, may be levied by the board of aldermen.

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In view of the foregoing, it is our thought that the board of aldermen of a fourth class city, may by ordinance, and without being authorized by a majority of the qualified voters of the city, levy an annual tax for general municipal purposes, at a rate not to exceed seventy-five cents on the one hundred dollars assessed valuation, as provided by Section 94.250, supra, plus an annual tax for any of the special purposes, and at a rate of not to exceed twenty cents on the one hundred dollars assessed valuation, as provided by subsection 2, Section 94.260, supra. Therefore, the total annual tax rate for said general and special municipal purposes, which may be levied by the board of aldermen of a fourth class city, without being authorized by the qualified voters, is ninety-five cents on the one hundred dollars assessed valuation.

CONCLUSION

Therefore, it is the opinion of this department that the maximum annual tax rate for general municipal purposes, which can be levied by the board of aldermen of a fourth class city, without a vote of the qualified electors, authorizing a greater rate, is seventy-five cents on the one hundred dollars assessed valuation, as provided by Section 94.250, RSMo 1949, plus an annual tax rate of not to exceed twenty cents on the one hundred dollars assessed valuation for any of the special purposes authorized by subsection 2, Section 94.260, RSMo 1949, and that the annual tax levy by the board of aldermen for such general and special purposes combined shall not exceed ninety-five cents on the one hundred dollars assessed valuation.

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

Very truly yours,

John M. Dalton  
Attorney General

PNC:ld,vlw