

CITIES, TOWNS & VILLAGES: 3rd class cities levying 80 cents  
TAXATION: tax for municipal purposes and 20  
PARKS: cents for park purposes may vote  
RECREATION: tax levy for recreational purposes.  
ELECTIONS: Combined levy for park and recre-  
ation not to exceed 20 cents.

June 29, 1962

OPINION NO. 102

Honorable Chester W. Hughes  
Representative, Johnson County  
208 Broad Street  
Warrensburg, Missouri



Dear Mr. Hughes:

We are in receipt of your request for an opinion of this office which reads as follows:

"The City of Warrensburg, Johnson County, is a city of the third class, and a number of years ago, acted under Section 90.500, 1959 R.S. Mo., and adopted a two mill tax for free public parks.

The City Council has adopted a tax levy ordinance setting the levy for general municipal services at .80 cents per \$100.00 assessed valuation and at .20 cents per \$100.00 assessed valuation for park purposes.

The 71st General Assembly adopted Senate Bill no. 17 which purports to authorize the submission to the voters of a special tax election to authorize a tax of not more than two mills to be used for recreational purposes.

The following questions are propounded to your office for opinion:

(1) Can the City of Warrensburg, if approved by the voters, levy and collect an additional two mill tax to be used for recreational purposes in view of their present levy for park purposes?

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(2) If the levy is voted, would it be in lieu of the existing park levy?

(3) Does any levy voted under Senate Bill No. 17 have to be included within the constitutional limitation for taxing?

(4) What is the form of the ballot to be used?"

Senate Bill 17 of the 71st General Assembly referred to in your letter now appears as Sections 64.750 to 64.780, RSMo Cum. Supp. 1961.

Section 64.755, RSMo Cum. Supp. 1961 provides as follows:

"1. The governing body or any political subdivision may provide, establish, equip, develop, operate, maintain and conduct a system of public recreation, including parks and other recreational grounds, playgrounds, recreational centers, swimming pools, and any and all other recreational areas, facilities and activities, and may do so by purchase, gift, lease, condemnation, exchange or otherwise, and may employ necessary personnel. Funds to be spent for such purposes may be set up in their respective budgets by any governing body.

2. If sufficient funds cannot be made available from ordinary levies, additional funds may be raised by a special tax levy, but no special tax shall be levied by any political subdivision unless the rate and

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purpose of the tax is submitted to a vote and a two-thirds majority of the qualified voters voting thereon vote therefor. The rate of such special tax levied by a political subdivision or by cooperating political subdivisions shall not total in the aggregate more than two mills on each one dollar assessed valuation of all real and tangible personal property subject to its or their taxing powers. No two political subdivisions shall levy this special tax on the same property, and in the event that any political subdivision is now authorized by statute to levy a tax for this purpose, the combined levies authorized by such statute and by sections 64.750 to 64.780 shall not exceed the larger levy authorized."

Such section is applicable to the City of Warrensburg by virtue of the provisions of Section 64.750, which provides that the term "political subdivision" includes cities.

You state that Warrensburg now levies a tax of two mills on the dollar for public park purposes under the provisions of Section 90.500, RSMo. Such section which was re-enacted in 1949 in House Bill 2038 of the 65th General Assembly authorizes cities and towns of the second and third class and those with a population of under 30,000 to levy a tax not in excess of two mills on the dollar for free public parks, after being authorized to do so at an election called upon the petition of 100 tax paying voters of the city or town. Such section provides in part as follows:

"\* \* \* Such taxes shall be within the constitutional limitation upon the power of any such city to levy taxes and shall cease in case the legal voters of such incorporated city or town shall so determine, by a majority vote at any annual election held therein."

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Section 94.070, RSMo 1959, which was re-enacted in 1945 (Laws of 1945, page 1,282), provides in part as follows:

"In addition to the levy aforesaid for general municipal purposes, all cities of the third class are hereby authorized to levy annually not to exceed the following rates of taxation on all property subject to its taxing power for the following special purposes:

\* \* \* \* \*

(3) For recreational grounds in the manner and at the rate authorized under the provisions of sections 90.500 to 90.570, RSMo."

The reference to "levy aforesaid for general municipal purposes" in Section 94.070 is to Section 94.060, RSMo 1959, which provides for a levy of not to exceed one dollar per one hundred dollar valuation which levy is made by the municipal legislative body. Such limit of one dollar per one hundred dollar valuation levy for municipal purposes is also found in Section 11(b) of Article X of the Constitution of Missouri.

It is clear that parks are included in the term "recreational grounds" found in Section 94.070.

The provisions of Section 94.070 authorizing a levy for recreational grounds at the rate provided in Sections 90.500 to 90.570, which rate is two mills per one dollar valuation, and which levy is in addition to the one dollar tax levy authorized by Section 94.060, and which is in addition to the one dollar maximum tax levy specifically authorized for cities in Section 11 (b) of Article X of the Constitution, are in conflict with the provisions of Section 90.500 authorizing the voting of a two mill levy for public parks in cities of the third class which section provides that such taxes must be within the constitutional limit, at least insofar as parks are concerned.

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The rule of statutory construction applicable here is that where two statutes are in direct conflict with each other, the latter enactment prevails over the former. The Supreme Court stated this rule in the case of State ex rel. City of Republic v. Smith, 345 Mo. 1158, 139 SW2d 929, where the Court said, l.c. 934:

"\* \* \* Moreover, where there are two acts on one subject, the rule is to give effect to both if possible, but if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as to repeal the first. \* \* \*"

The fact that the later enactment, Section 90.500, was made by a revision bill does not affect the application of this rule of statutory construction. In the case of Montague v. Whitney, 298 SW2d 461, the St. Louis Court of Appeals enunciated such principle and said, l.c. 465:

"\* \* \* By the enactment of H.B. No. 2049, the 65th General Assembly specifically repealed Section 11629 and enacted a new and different statute, Section 111.010 RSMo 1949, providing specifically that the provisions of 'this chapter' shall not apply to fourth-class cities. The section dealing with partially fraudulent ballots was a part of such chapter, and it was thereby made inapplicable to fourth-class cities."

Therefore, the levy voted by the voters of Warrensburg under Section 90.500 is a levy within the constitutional limits of one dollar per one hundred dollars valuation set forth in Section 11 (b) of Article X of the Constitution.

Since the total tax levy for Warrensburg is 80 cents per one hundred dollars for general municipal purposes and 20 cents per one hundred dollars for park purposes under Section 90.500, the total levy in such city is one dollar per one hundred dollars valuation. It follows that if any levy is made under the provisions of Senate

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Bill 17, such levy must be authorized by a vote under the provisions of subsection 2 of Section 64.755, since the funds for a recreation system cannot be made available from ordinary levies which are the levies within the one dollar per one hundred dollar valuation constitutional limit.

The last sentence in Section 64.755 provides that if any political subdivision is now authorized by statute to levy a tax for "this purpose", the combined levies authorized by the statute levying a tax for "this purpose" and Senate Bill 17 shall not exceed the larger levy authorized.

We believe that the meaning of the last sentence in Section 64.755 is that any statute providing for a system of public recreation or for parks, for recreational grounds, for playgrounds, for recreational centers, for swimming pools or for recreational facilities and activities is a statute providing a levy for the purpose of the levy authorized by Senate Bill 17. Therefore, a levy for public parks authorized by Section 90.500 is for the purpose referred to in Section 64.755 and the provision of the last sentence of such section is applicable when a levy is authorized under Senate Bill 17. The first sentence of Section 64.755 relating to a "system of public recreation" specifically lists parks as one of the components of a system of public recreation. Further the second sentence of Section 64.755 refers to "such purposes" which means that there are several purposes or components of a system of public recreation that may be established by a political subdivision. However, when in the last sentence of such section reference is made to "this purpose" in the singular, we believe that it means any purpose found in Section 64.755, which is authorized by another statute and that therefore the authorization for a levy for public parks under the provisions of Section 90.500 is a levy for the purpose of the levy authorized by Senate Bill 17.

It follows, therefore, that since the purpose of the park levy which is a purpose authorized by Senate Bill 17 is now authorized by statute, that the total levy that can be made under both Senate Bill 17 and Section 90.500 be not in excess of the larger levy. Since Senate Bill 17 and Section 90.500 each authorize a maximum levy of two mills on the dollar, the combined

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levy cannot exceed two mills per one hundred dollar valuation.

If a levy is authorized by a vote under provisions of Senate Bill 17, the city council will exercise its discretion as to what levy will be made under authorization of Section 90.500 and what levy will be made under Senate Bill 17, but the combined levy cannot exceed two mills per one hundred dollars valuation.

Section 90.510, RSMo, makes clear the fact that the actual levy under Section 90.500 is at the discretion of the city council.

Section 64.780, Cum. Supp. 1961, provides as follows:

"The provisions of sections 64.750 to 64.780 shall not in any way repeal, affect or limit the powers heretofore or hereafter granted to any county, city, township, village or school district, under the provisions of any charter or by law, to establish, maintain and conduct parks and other recreational grounds and public recreation."

Such section makes clear the legislative intent that Senate Bill 17 should not repeal any statutes providing a tax levy for parks. Therefore, it is clear that the actual determination of the precise levies to be made under Section 90.500 and Senate Bill 17, if the voters authorize a levy under Senate Bill 17 has been left by the legislature to the discretion of the city council so long as the combined levies do not exceed two mills on the dollar.

The ballot in an election under Senate Bill 17 must state the purpose for which authorization is being voted and the maximum rate of levy authorized at such election.

#### CONCLUSION

It is the opinion of this office that since the City of Warrensburg is now levying 80 cents per one hundred dollars valuation for general municipal purposes and 20 cents per one hundred dollars valuation for park purposes authorized by a vote under Section 90.500, RSMo, such

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city can vote a levy of not to exceed two mills per one dollar valuation under the provisions of Senate Bill 17 of the 71st General Assembly, but that the city council must exercise its discretion to determine the actual levies to be made under the provisions of Section 90.500, RSMo and Senate Bill 17 of the 71st General Assembly, the combined levies not to exceed two mills per one dollar valuation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

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