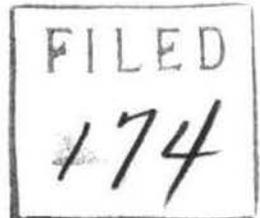


LEVEE DISTRICTS:
LEVEE DISTRICT SUPERVISORS:
TAXATION:

The supervisors of a circuit court levee district have authority under Section 245.175 to levy an additional tax for organizational purposes if the total levies do not exceed one dollar per acre.

May 15, 1964

OPINION NO. 174



Honorable Bill Crigler
State Representative
Howard County
402 West Morrison
Fayette, Missouri

Dear Mr. Crigler:

Your letter which we received April 21, 1964, asks for an opinion on the following question:

"May the Board of Supervisors of such a levee district, having once levied a 25¢ organizational tax, proceed to levy an additional organizational tax to provide funds for the purposes mentioned in Section 245.175, provided that the total of such organizational tax levies does not exceed the present maximum limitation of \$1 per acre upon each acre of land and each mile of right-of-way of all public service corporations within such district?"

You state that a levee district was organized in 1951 under the provisions of Sections 245.010 to 245.280 of the Missouri Statutes, and that the duly elected board of supervisors of such district levied an organizational tax in the amount of twenty-five cents under Section 245.175, RSMo 1959.

You further state that the tax funds realized under this levy were expended and exhausted in making payment of organizational expenses.

You do not state when this levy was made but we assume that it was shortly after the organization in 1951, and we also assume that the levee district is not within the limits of a city. You state that it is necessary to raise additional funds to complete the organizational work and in order to obtain Federal moneys now available.

Honorable Bill Crigler

Section 245.175, RSMo 1959, is a part of Chapter 245, entitled "Levee Districts". This section provides in part:

"The board of supervisors of any levee district organized under * * * (this chapter) shall levy a uniform tax of not more than one dollar per acre * * * to be used for the purpose of paying expenses incurred * * * in organizing said district, making surveys of the same and assessing benefits and damages and to pay other expenses necessarily to be incurred * * *."

It further provides that this preliminary work shall be done before the board may proceed under Section 245.180, which section provides for the levy of taxes to pay for the cost of the improvements. The Legislature, by this statute, intended to provide a method of raising funds for this important preliminary work.

The right to levy more than one tax for organizational purposes (within the maximal limits) has been approved in the case of State ex rel Hotchkiss v. Lemay Ferry Sewer District of St. Louis County, 92 SW2d 704. This was a case involving sections of the statutes governing sewer districts, but those sections are very similar to the sections under discussion here. The Court said at l.c. 706:

"As heretofore seen, section 11037 fixes the maximum levy which can be made for the purpose of paying preliminary expenses incurred and to be incurred at 10 cents per 100 square feet, but it does not require that the maximum of 10 cents per square be levied in the first instance. The Legislature knew that fact. If a district should levy less than the maximum limit of 10 cents, then incur expenses in excess of the levy made, but within the authorized limit of 10 cents, such deficiency should be paid because incurred within the limit authorized. * * *"
(Emphasis ours.)

As pointed out, this case specifically states that there was no requirement to levy the maximum tax in the first instance and in the event the first levy is less than the maximum, then another levy can be made as long as the sum total is within the maximum, which is the precise question here.

Honorable Bill Crigler

The case of McCord v. Missouri Crooked River Backwater Levee District of Ray County, 295 SW2d 42, l.c. 45, holds that Chapter 245 is a "code within itself". It further provides:

"* * * The entire legislative act must be considered together and all provisions must be harmonized, if reasonably possible, and every word, clause, sentence, and section of an act must be given some meaning unless it is in conflict with the legislative intent. * * *"

To insure a liberal construction of Sections 245.010 to 245.280 relating to circuit court levee districts, the Legislature included Section 245.280, which section reads in part:

"* * * Sections 245.010 to 245.280 are hereby declared to be remedial in character and purpose, and shall be liberally construed by the courts in carrying out this legislative intent and purpose * * *."

Thus, the Legislature has stressed the fact that it is their intent that these sections be liberally construed for the specific purpose of carrying out the provisions of the Circuit Court Levee District Law.

Therefore, when it becomes necessary for a board of supervisors of a duly organized circuit court levee district to incur additional expenses in organizing the district for the purposes specified in Section 245.175, RSMo 1959, an additional tax levy is authorized provided the total levies do not exceed the authorized one dollar per acre.

CONCLUSION

It is the opinion of this office that the board of supervisors of a circuit court levee district may levy an additional tax where required for organizational and other purposes as authorized by Section 245.175, RSMo 1959, in order to provide for the preliminary survey and to pay for the expenses incurred or to be incurred; provided further, that said tax and the one previously levied do not total more than one dollar per acre as set forth in Section 245.175.

Honorable Bill Crigler

The foregoing opinion, which I hereby approve, was prepared by my Assistant, O. Hampton Stevens.

Yours very truly,

Thomas F. Eagleton
THOMAS F. EAGLETON
Attorney General