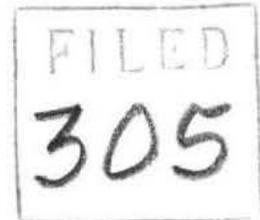


FAIRS:
COUNTY FAIRS:
CITIES, TOWNS, AND VILLAGES:
TAXATION:
PARKS:
CONSTITUTIONAL LAW:

A county which presently levies the maximum property tax authorized by the Constitution may not levy an additional tax to secure funds for a county fair under authority of Section 64.755, RSMo Cum. Supp., so long as a city within the county levies a tax on property within the city for park purposes, one of those purposes set out in Section 64.755. Nor may a county submit a proposed tax to the public in anticipation of legislative action authorizing the proposed tax.

November 30, 1964

Opinion No. 305



Honorable John T. Russell
State Representative
Laclede County
Box 93
Lebanon, Missouri

Dear Mr. Russell:

This is in answer to your recent request for an opinion of this office relating to a proposed tax levy to secure funds to be used for a county fair.

Your first question reads as follows:

"Are there any statutes which would allow the question of an additional tax levy for the purposes of capital improvements to be used as agricultural and fair exhibits? It has been suggested perhaps a section pertaining to recreation could be used for this purpose. The city of Lebanon located in Laclede County now levies a 2 mil tax for park purposes."

Section 262.500, RSMo 1959, provides that in all counties of this state in which the constitutional limit is not levied for county purposes, the county court, with the approval of the voters, may levy a two mill tax for the promotion of county fairs as described therein. One half of this tax must be used for premiums at such fairs and only the other half can be used for the purpose of purchasing grounds and constructing buildings for a county fair. Laclede County has a twenty million dollar assessed valuation and the county therefore may levy a maximum of fifty cents for county purposes. You state in your letter that the county levy of Laclede County is now fifty cents, therefore, no further levy can be made under Section 262.500.

The statute pertaining to recreation to which you refer is Section 64.755, RSMo Cum. Supp. 1963, which reads as follows:

"1. The governing body of 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, or bond issue within constitutional limits, but no special tax shall be levied or any bonds issued by any political subdivision unless the rate and purpose of the tax or bond issue 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 one or more political subdivisions 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. 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 this section shall not exceed the larger levy authorized." (Emphasis added)

This section provides for a tax levy for public recreation, including parks and other recreational grounds, playgrounds, recreational centers, swimming pools, and all other recreational areas, facilities and activities. There appears to be a "close" question as to whether capital improvements to be used as agricultural and fair exhibits would be included within the term "recreation" as used in the above statute. However, we do not feel it necessary to decide this inasmuch as if we assume that capital improvements for agricultural and fair exhibits are embraced by the term "recreation", it is our opinion that at this time, Laclede County may not make an additional levy under this statute for other reasons.

The term "this purpose" as used in the emphasized portion of Section 64.755, RSMo Cum. Supp. 1963, means any of those purposes set out in subparagraph 1, namely, to "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 recreational areas, facilities and activities * * *." This was our holding in Opinion No. 102 of this office rendered on June 29, 1962, to the Honorable Chester W. Hughes, Representative, Johnson County, a copy of which is enclosed.

Thus, this last sentence means that if any political subdivision is now authorized by another statute to levy a tax for any purpose set out in Section 64.755, the combined levies authorized by such other statute and by Section 64.755 shall not exceed the larger levy authorized. Inasmuch as Lebanon, a political subdivision, Section 64.750 (3), RSMo 1963 Cum. Supp., now levies a tax of two mills for park purposes, one of the purposes set out in Section 64.755, and this is the maximum allowed by either Sections 90.500 or 94.070 (3) which authorize this levy, it follows that the county could not levy a two mill tax under Section 64.755 which could be assessed against property subject to the Lebanon tax.

Section 3 of Article X, Constitution of Missouri, 1945, provides that taxes must be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Thus, since a county levy must apply equally to all property within the county, Laclede County could not constitutionally make a valid levy under Section 64.755 which would operate only upon property located outside the City of Lebanon. Since a tax under Section 64.755 may not be levied on property in the town of Lebanon and the rule of uniformity requires that a county property tax must apply to all property within the county, it is evident that so long as Lebanon retains its present park levy, the county may not enact a tax levy under Section 64.755.

The second question raised by your letter is as follows:

"Is it possible that this matter of the fair tax be submitted to the people at the November Election under Section 262.500, RSMo., in anticipation of legislation which would provide that such tax in excess of the constitutional limit, if approved by the people, could be used for fair purposes only. It is understood that the county levy is now fifty cents, which is the maximum."

The power to levy and collect property taxes is purely statutory and taxes can be levied only by the tribunal to which

such power is granted by the Legislature. Keane v. Stródtman, 18 SW2d 896; State v. Young, 38 SW2d 1021. In answer to your first question, we found no existing statutes authorizing Laclede County under its present circumstances to levy a tax to raise funds to be used for county fair purposes. In absence of such a statute the county is not authorized to submit a proposed tax to a vote anticipating legislation authorizing the tax.

It is our understanding from this question that you intend to amend Section 262.500 so as to provide that the county may levy the tax authorized therein even though it would be in excess of the constitutional limit. Under this section as now written, the authority for such a tax is a permanent one. The only authorization for making a permanent tax in excess of the constitutional limit is under the provisions of Article X, Section 11(c) of the Constitution which provides that the Legislature may enact laws authorizing a tax in excess of the constitutional limit for "library, hospital, public health, recreation grounds, and museum purposes." The only basis upon which this tax could be held to be a permanent one in excess of the constitutional limit under this section of the Constitution would be that it is one for "recreational grounds". It is not our policy to give an opinion as to the constitutionality of proposed legislation except in exceptional cases. However, we do feel there is some question as to whether any or all of the uses for the tax provided in Section 266.500 would be included in the term "recreational grounds".

In view of our answer to your first two questions, it is not necessary to answer your third question regarding the form in which the question should be presented to the people.

CONCLUSION

A county may not levy an additional tax to secure funds for construction of buildings to be used for a county fair under authority of Section 64.755, RSMo Cum. Supp. 1963, so long as a city within such county levies a tax of two mills on the dollar on property within the city for park purposes, one of those purposes set out in Section 64.755.

Nor may a county submit a proposed tax for payment of premiums at public fairs in such county and purchasing grounds and erecting buildings for fair purposes to the public in anticipation of legislative action removing the constitutional limitation upon the tax authorized by Section 266.500, RSMo 1959.

Honorable John T. Russell

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,


THOMAS F. EAGLETON
Attorney General

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4/10/11