

Opinion No. 96 (1966)  
Opinion No. 472 (1965)  
Answered By Letter  
(Ashby)

March 3, 1966



Honorable Daniel V. O'Brien  
Prosecuting Attorney  
St. Louis County  
Courthouse  
Clayton, Missouri 63105

Dear Mr. O'Brien:

This letter is in response to your inquiry on the authority of the city council of a third class city within a first class county to levy less than one and a half mill tax (as prescribed in their ordinance) to fund a retirement system established under Section 86.583, RSMo.

The Ordinance No. 3418 of Kirkwood, Missouri (adopted by vote on November 5, 1946) in its preamble provides as follows in pertinent parts:

"\* \* \*Providing for the source of said fund; providing for an annual tax levy of one and one-half (1 1/2) mills on each one dollar of all taxable property assessed in said City and giving the City Council power to reduce and restore said tax rate; \* \* \* \*"

Section 9 of said Ordinance No. 3418 reads as follows:

"A tax of one and five-tenths (1 1/2) mills shall be levied on each dollar of value of all taxable property annually assessed in the City of Kirkwood, Missouri as the same appears on the tax books, which sum shall be earmarked in a separate fund, and set aside and made a part of the Policemen and Firemen Retirement Fund by the City, provided, however, that said sum shall not be used for or devoted to any purpose other than herein specified. Provided

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further that whenever the Policemen and Firemen Retirement Fund from all sources reaches a sum equal to one and one-half (1 1/2) times the actuarial required reserve, the City Council may reduce the tax levy herein provided, and if necessary may subsequently restore the same."

(Emphasis Added)

Section 94.020, RSMo, provides the authority for the council to levy taxes and licenses in the following words:

"The city council 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."

A basic guide for construing ordinances is first to seek the intention of the lawmakers for the whole act and, if possible, to effectuate that intention. (Julian v. Mayor et al 391 S.W. 2d 864; May Department Store Company v. Weinstein, 395 S.W. 2d 525). Words should be given their plain and ordinary meaning to promote the object and purpose of the act. (Julian v. Mayor et al, supra; May Department Store Company v. Weinstein, supra.).

We believe the council, in its discretion, may reduce the tax levy provided in Ordinance No. 3418, when the Fund from all sources reaches a sum equal to one and one-half (1 1/2) times the actuarial required reserve. Under the ordinance as written, the requirement (that a sum equal to one and one-half times the actuarial required reserve be reached) is a condition precedent before such action can be taken by the Council. It appears that a sum equal to one and one-half times the actuarial required reserve, based on current information, is a product susceptible of mathematical calculation.

The term, "may", as used here, is believed to be permissive only and we believe therefore that such action rests solely in the discretion of the City Council (State ex Inf McKittrick v. Wymore, 119 S.W. 2d 941 l.c. 944).

We conclude, therefore, that when the fund reaches the

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required status defined by Ordinance No. 3418, the City Council, in its discretion, may reduce the amount of the levy for the Firemen and Policemen Retirement Fund.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General