

(S. 64.755 is now Sec. 67.755),
See RSMo, 1969

CONSTITUTIONAL LAW:
PARKS:
RECREATION GROUNDS:
CITIES, TOWNS AND
VILLAGES:
TAXATION:

The City of Rolla may, if approved by the voters, levy and collect an additional twenty cents special tax for recreational purposes under Section 64.755, RSMo Supp. 1967, in addition to a tax

levy of eighty cents for municipal purposes under Section 94.060, RSMo 1959, and twenty cents for park purposes under Section 90.500, RSMo Supp. 1967.

OPINION NO. 143

June 12, 1969



Honorable A. Basey Vanlandingham
Missouri State Senator-19th District
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Vanlandingham:

This is in answer to your request for an opinion of this office as to whether the City of Rolla may, if approved by the voters, levy and collect an additional twenty cents special tax for recreational purposes under Section 64.755, RSMo Supp. 1967, in view of the fact that Rolla already has a tax levy of eighty cents for municipal purposes under Section 94.060, RSMo 1959, and twenty cents for park purposes under Section 90.500, RSMo Supp. 1967.

Enclosed is a copy of Attorney General Opinion No. 102 dated June 29, 1962, issued to the Honorable Chester W. Hughes, which held that third class cities levying eighty cents tax for municipal purposes under Section 94.060 and twenty cents tax for park purposes under Section 90.500, RSMo, may vote a tax levy for recreational purposes not to exceed twenty cents under Section 64.755, but that the combined levy for park and recreation purposes cannot exceed twenty cents.

It is our opinion that Opinion No. 102 is still valid, taking into account, of course, the amendment to Section 90.500. Subsequent to Opinion No. 102 the Missouri General Assembly amended Section 90.500 so as to increase the maximum allowable levy from twenty cents to forty cents. Therefore, if the con-

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stitutional limitation of one dollar imposed by Section 11(b) of Article X, Constitution of Missouri, is not exceeded, Rolla can levy and collect a tax of twenty cents under Section 64.755 since this levy combined with the twenty cents levy under Section 90.500 does not exceed forty cents.

Section 11(b), Article X, Constitution of Missouri provides in part:

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

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

On page 5 of Opinion No. 102 it was held that a levy voted 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. Therefore, since Rolla already has a one dollar levy comprised of eighty cents for municipal purposes under Section 94.060 and twenty cents for park purposes under Section 90.500, the only way Rolla could now impose an additional levy above the statutory limitation of twenty cents under Section 64.755 would be if such additional levy is authorized by law under Section 11(c), Article X, of the Constitution.

Section 11(c), Article X, provides that the rates of taxation in municipalities, counties and school districts may be increased by a vote of the people for specified periods of time and in addition provides as follows:

" * * * 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."

It is our opinion that the facilities provided for in Section 64.755 are included in the term "recreation grounds" found in Section 11(c), Article X. Therefore, the question is whether Section 64.755 authorizes a levy in excess of the constitutional limitation.

The applicable part of Section 64.755 reads as follows:

"2. If sufficient funds cannot be made available from ordinary levies, additional funds may

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be raised by a special tax levy, general obligation bond issue within constitutional limits or revenue bond issue, 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 shall not total in the aggregate more than twenty cents on each one hundred dollars 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. All ballots submitting such special tax to the voters shall state on their face the rate of the proposed levy in cents per hundred dollars of assessed valuation."

It is our opinion that in the absence of an express statement in Section 64.755 that the tax provided for is within or in excess of the constitutional limitation that the legislative intent should be construed that Section 64.755 provides for an authorization for a tax in addition to the constitutional limit, since it is for one of the purposes for which a tax can be authorized by the legislature in excess of the constitutional limitation.

The legislative intent is further indicated by the statement [I]f sufficient funds cannot be made available from ordinary levies, additional funds may be raised by a special tax levy, * * * ". This language would be meaningless if the levy could not be in excess of the constitutional limits because additional funds could not, as a practical matter, be raised above the ordinary levy already provided for by Section 94.500. Further, the fact that a two-third's vote is necessary for imposition of the tax levy under Section 64.755 indicates that it was the intent of the legislature to authorize the levy of the tax in addition to the constitutional limitation.

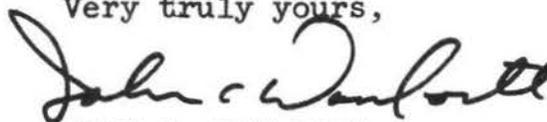
CONCLUSION

It is the opinion of this office that the City of Rolla may, if approved by the voters, levy and collect an additional twenty cents special tax for recreational purposes under Section 64.755, RSMo Supp. 1967, in addition to a tax levy of eighty cents for municipal purposes under Section 94.060, RSMo 1959, and twenty cents for park purposes under Section 90.500, RSMo Supp. 1967.

Honorable A. Basey Vanlandingham

The foregoing opinion, which I hereby approve, was prepared by my assistant Walter W. Nowotny, Jr.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure:
OP.No. 102
6-29-62, Hughes