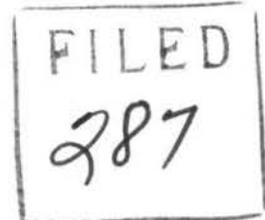


July 19, 1971

OPINION LETTER NO. 287  
Answer by letter-Mansur

Mr. Charles O'Halloran  
State Librarian  
Missouri State Library  
308 East High Street  
Jefferson City, Missouri 65101



Dear Mr. O'Halloran:

This is in response to your request for an official opinion from this office which reads as follows:

"I should like to ask your opinion on the following matter:

"Section 182.010, RSMo, provides for the creation of a county library district and for the levy of a tax to support that library.

"Section 182.020, RSMo, particularly in paragraph 3, provides for the reconsideration of the tax for a county library district 'as in the case of establishing such county library district.'

"We presume that State Statutes provide similar methods for the citizens to vote for the creation of, and tax levies for, other public services.

"We should like to inquire whether it is possible for the voters to be asked to vote on two such matters, simultaneously, in the same ballot proposition.

"For example, a county has a county library district which is supported by a 2 mill tax

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but has no ambulance service. Certain citizens wish to seek voter approval of a .5 mill tax for ambulance service. Can the proposition proposed to the voters be worded something like the following:

For a 1.5 mill tax for a free county library and a .5 mill tax for county ambulance service.

Against a 1.5 mill tax for a free county library and a .5 mill tax for county ambulance service.

"As you can see, the above proposal is in effect to transfer funds from one purpose to another so that total taxes are not increased. This leads to a further question: Could the voters in the above county be asked to pass upon the following proposition:

For transferring .5 mill tax from the county library fund to the ambulance service fund.

Against transferring .5 mill tax from the county library fund to the ambulance service fund.

"I would appreciate your opinion on this."

You first inquire whether it is possible to submit to the voters a tax for a free county library and a tax for a county ambulance service on the same ballot as one proposition. It is our view this cannot be done.

Section 182.010, RSMo 1969, provides for the creation of county library districts. Such a district may consist of the entire area of the county or it may consist of only that area of the county outside of the territory of all cities and towns in the county which maintain and control free public and tax supported libraries.

The tax provided for in Section 182.020, is a tax only against the property in the county library district which, as stated above, may consist of all of the territory within the county or only part of the territory within the county. In any event, it is clear that

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the county library district is a separate entity from the county. In view of this, we believe it to be perfectly clear that there could not be a single proposition to levy taxes for a county library district and to levy county taxes anymore than there could be one ballot proposition for levying city taxes and county taxes.

Further, the principles of law regarding the submission of more than one proposition to the voters as a single proposition is stated in 29 C.J.S., Elections, paragraph 170, l.c. 477, as follows:

"Two or more propositions may be submitted on the same ballot, provided the voter is given the opportunity to vote for or against each question submitted separately and independent from his vote for or against the other propositions submitted, since it is well settled that two or more distinct propositions cannot be submitted as a single question. Where more than one proposition is to be submitted under some statutes, the proposition must be separately numbered and printed."

These principles of law have been enunciated by our Supreme Court on numerous occasions.

In State ex rel. Pike County v. Gordon, 268 Mo. 321, the Supreme Court held a proposition to issue bonds amounting to \$75,000 to build a courthouse at the county seat and \$25,000 to build another courthouse in another town in the county when submitted as one combined and joint proposition was illegal. The court stated, l.c. 329, as follows:

"2. Tested by the general rule, is the question submitted to the voters of Pike County single or does it contain two separate purposes? The proceeds of the bonds were to be used for (1) a county (or circuit) courthouse at Bowling Green, and (2) for a common pleas courthouse at Louisiana. The submission combined the two. The voters could vote for both courthouses or against both court houses. No opportunity was given to vote for one and against the other. This appears from the face of the question submitted.

"(a) 'The will of the people, expressed by the adoption of the proposition for the borrowing or expenditure of money . . . is

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the law of the land. The force and effect thus imparted to their will is intended to be given to that will freely expressed. . . . Why should the force and effect of law be given to the vote adopting any proposition which has not rested wholly on its merits for the favor it has obtained at the hands of the people, but which may have been assisted to the votes it received, by other questions, with which it was so connected as that it must stand or fall with them?' [McMillan v. Lee County, 3 Iowa, 1.c. 320.] 'If they' (two propositions) 'are submitted together . . . the voter . . . has no liberty of choice.' [Gray v. Mount, 45 Iowa, 1.c. 595.]

"All elections, as well for measures as men, should be perfectly free, uninfluenced by any consideration, other than the merits of the individual man or measure proposed.' [Supervisors v. Railroad, 21 Ill. 1.c. 373.]

"Two or more questions may be submitted at a single election, provided each question may be voted on separately, so that each may stand or fall upon its own merits. But that is a very different matter from tacking two questions together to stand or fall upon a single vote. It needs no argument to show the rank injustice of such a mode of submission.' [Lewis v. Comrs., 12 Kan. 1.c. 213.]

"This is the doctrine approved in State ex rel. v. Wilder, 217 Mo. 1.c. 270, and cases cited.

"(b) In State ex rel. v. Allen, 178 Mo. 555, this court recognized the rule, approving the doctrine in McBryde v. City of Montezano, 7 Wash. 69. The court held, however, that a proposition to issue bonds for the acquisition, by purchase or construction, of an electric light plant, was single. The end, the court said, was the same, the board of trustees being left to determine the method."

In State ex rel. City of Bethany v. Allen, 186 Mo. 673, the question submitted proposed an issuance of bonds for the purpose of the erection and the furnishing of a city hall, city prison and

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hosehouse and for the repair and improvement of a water and light plant, extension of mains, wires, etc. The court held this contained "at least two separate and distinct propositions" and refused to order the bonds registered.

In State ex rel. City of Joplin v. Wilder, 217 Mo. 261, l.c. 269, a proposition was submitted to issue bonds to construct a sanitary sewer in one district in Joplin and a storm sewer in another district thereof. The court, unanimously, held the submission double. The court's opinion reviewed previous decisions. The court held that none of these decisions supported relator's contention that a submission proposing to issue bonds to raise funds to build two separate courthouses, in separate cities, for different courts and for different amounts, contained but one object and was single.

County libraries are governed by the provisions of Sections 182.010 to 182.120, RSMo. Section 182.020, RSMo, provides that if a majority of all the votes cast at the election for establishing a county library district and a tax rate for a free county library is in favor of establishing a free county library, thereafter such county library district shall be considered as established and the tax specified shall be collected, from year-to-year, and deposited in the county treasury to be kept in a fund known as "County Library Fund" and dispersed on warrants drawn by the county library board.

Under Section 67.300, RSMo, county ambulance service may be established by the county court for the purpose of transporting sick or injured persons to hospitals or other places for treatment of illness or injury. This section further provides that the county court may acquire by gift or purchase the necessary vehicles and operate the same or contract for such services. The establishment and operation of the ambulance services is under the control and jurisdiction of the county court.

We are unable to see any connection or relationship between the establishment and operation of a county library district and the establishment or furnishing of county ambulance service. The expenditure of the tax money voted for the support and maintenance of the county library is under the control of the county library board of trustees. The establishing and operation of county ambulance service is under the jurisdiction and control of the county court and expenditure of any funds for that purpose is under the control of the county court. Taxes for the establishment and support of a county library requires only a majority vote whereas an increased tax rate for ambulance service under Section 137.065, RSMo, requires a two-thirds majority vote.

In answer to your second question whether the voters could be asked to vote for a transfer of a five-tenths mill tax from the

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county library fund to the ambulance service fund, it is our opinion it cannot be done.

We find no statute authorizing such a proposition to be submitted to the voters. An election cannot be held unless it is specifically provided for by law, State ex inf. Rice ex rel. Allman v. Hawk, 228 S.W.2d 785.

Yours very truly,

JOHN C. DANFORTH  
Attorney General