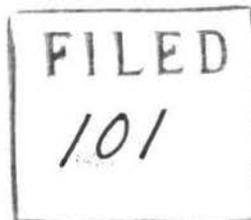


TAXATION: Taxes may be levied by the governing body of a county on behalf of a fire protection district at the time required by law for levy of taxes for county purposes, whether or not the board of such district has certified its rate of levy to the county governing body by May 15. The tax may be imposed for a full year, although the district in question was formed after January 1.

OPINION NO. 101

February 8, 1974

Honorable Howard E. Hines  
Representative, District 40  
Room 311, Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Hines:

This official opinion is issued in response to your request for a ruling on the following question:

"Are the Commissioners or the board of the Salem Fire District in Jackson County, Missouri required by law to certify a rate of levy to the County Court or an equivalent body by the fifteenth day of May of each year that taxes are assessed and collected?"

Your question has arisen in the context of the following factual situation: The Salem Fire District was created by election July 17, 1973. The election was ordered on May 11, 1973. The board of a fire protection district is required by Sections 321.240-250, RSMo 1969, to fix its rate of levy by May 15 of each year and to certify such rate to the county governing body in order for the county court to levy the fire district tax "at the time required by law for levy of taxes for county purposes." Under the Jackson County Charter that latter date is August 31. The board, of course, did not exist and could not possibly have existed by May 15, 1973. In August, however, the newly elected board certified a rate of levy, and a tax was levied and collected for the full year 1973.

The pertinent provisions of Missouri law, Sections 321.240 and 321.250, RSMo 1969, provide as follows:

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on the one hundred dollars valuation, in addition to the rate which the board may levy under this section, by submitting the following question to the voters at any election in such district at which a member of the board of directors is to be elected:

OFFICIAL BALLOT

Instructions to voters:

Place an (X) in one square.

Shall the Board of Directors of \_\_\_\_\_ Fire Protection District be authorized to increase the annual tax rate from \_\_\_\_\_ cents to \_\_\_\_\_ cents on the hundred dollars assessed valuation?

AGAINST THE TAX INCREASE

FOR TAX INCREASE

and in addition thereto, to fix a rate of levy which will enable it to promptly pay in full when due all interest on and principal of bonds and other obligations of the district, and to pay any indebtedness authorized by a vote of the people as provided in this chapter; and in the event of accruing defaults or deficiencies in the bonded or contractual indebtedness, an additional levy may be made as provided in section 321.260."  
(Section 321.240)

"On or before the fifteenth day of May of each year, the board shall certify to the county court of the county within which the district is located a rate of levy so fixed by the board as provided by law, with directions that at the time and in the manner required by law for levy of taxes for county purposes such county court shall levy a tax at the rate so fixed and determined upon the assessed valuation of all the taxable tangible property within the district, in addition to such other taxes as may be levied by such county court." (Section 321.250)

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Your question actually raises two issues. The first is whether it was proper for the fire protection district to tax property within the district for a full year, although the district did not exist as a political entity for the entire year. In Long v. City of Independence, 229 S.W.2d 686 (Mo. 1950), the Supreme Court of Missouri held that a city could apply property taxes to annexed property for a full year even though the property was annexed to the city after the year had begun. That situation was analogous to the one presented here. We believe that a newly created political entity has the same right to tax its property for a full year (in the year of its creation) as an existing entity which gains new property during a year. This is true even though the assessment for that year's tax is to be based on the value of the property as of January 1. The tax itself is incurred as of the date of its levy, so that property which is located in the district on the date of levy can be taxed by the district.

Therefore, we conclude that the tax at issue here would not be void as retrospective. The case of In re Armistead, 245 S.W.2d 145 (Mo. 1952), which dealt with the intangible tax and held that tax void as retrospective in the first year of its application, does not require a contrary result even though it was decided after the Long case. The Armistead case did not purport to overrule or question Long, and the intangible personal property tax which it involved is different in nature from a tax on real property; the intangible personal property tax is based upon the yield of intangible personal property during the entire year preceding the year of the tax. On the other hand, a real property tax is based upon the value of the property rather than its yield.

The second, and more difficult, issue here is whether the provisions of Sections 321.240 and 321.250 prohibit the imposition of the tax whose rate of levy was certified by the board of the Salem Fire District in August, 1973. These statutes do not specify any consequences or penalties for fire protection districts whose boards fail to certify their rate of levy by May 15 of any year. We believe that the May 15 deadline for certification of the rate of levy is merely directory and not mandatory. Its purpose seems to be only the encouragement of diligence on the part of the board of a fire protection district in certifying its rate of levy.

Section 321.250 makes clear that the tax is only to be levied by the governing body of the county ". . . at the time and in the manner required by law for levy of taxes for county purposes. . ." In light of this provision, the mere failure of the fire protection district's board to certify the levy by May 15 would not prejudice any vested rights of the district's taxpayers, nor prevent the levy of the district's taxes on August 31.

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CONCLUSION

Therefore, it is the opinion of this office that taxes may be levied by the governing body of a county on behalf of a fire protection district at the time required by law for levy of taxes for county purposes, whether or not the board of such district has certified its rate of levy to the county governing body by May 15. The tax may be imposed for a full year, although the district in question was formed after January 1.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,

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

JOHN C. DANFORTH  
Attorney General