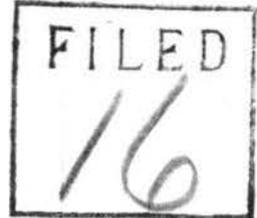


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TOWNSHIPS: Special election to vote bonds  
for purchasing land and erecting  
building.

3/8  
March 7, 1940



Hon. G. R. Chamberlin,  
Prosecuting Attorney,  
Cass County,  
Harrisonville, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of March 4th asking for an opinion upon the following matter:

"The County Court has made the inquiry as to whether or not a Township Board may vote a levy for the purpose of building a township hall.

In the case at hand what the Township proposes to do is to vote a levy for one year, which they deem will be sufficient to construct a modest township hall. The levy they have in mind is fifteen cents in excess of the levy allowed by Section 9875, Revised Statutes of Missouri, 1929.

The matter presents a sort of double question. First, that if such thing was possible, whether or not the election would be ordered by the Township Board or by the County Court as is provided in voting bonds for road purposes.

I am unable to find any Statute which allows a township to vote bonds or which sets out any manner of doing it,

March 7, 1940

therefore, I presume to indulge upon your good nature as to an opinion on the same."

Section 8 of Article IX of the Constitution authorizes the General Assembly to provide for township organization. Pursuant to this authorization Chapter 86 of the Revised Statutes of 1929, and amending acts, have been enacted. Section 12256, Article 2, Chapter 86, enumerating the powers of townships, provides among other powers:

"Each township, as a body corporate, shall have power and capacity: First, to sue and be sued, in the manner provided by the laws of this state; second, to purchase and hold real estate within its own limits for the use of its inhabitants, subject to the power of the general assembly; \*\*\*\*\*"

The case of State ex rel. Jordon v. Haines, 72 Mo. 377, upholds the right of a township to acquire and pay for a site and building for township purposes. This decision was based on the constitution then in force and the Acts of 1873, which contained a provision similar to that in Section 12256, pertaining to the purchasing and holding of real estate by townships.

Section 11, Article X of our present Constitution places a limit upon the power of taxation of municipal corporations named therein but contains the following provision:

"For the purpose of erecting public buildings in counties, cities, or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city or school district, voting at such election, shall vote therefor."

Section 12 of Article X of the Constitution contains a limitation upon the powers to incur indebtedness and raise the rate of taxation by the vote of the people. The Supreme Court of Missouri in the case of St. Joseph Board of Public Schools v. Patten, et al., 62 Mo. 444, l.c. 449 and 50, in passing upon the question of the right of the St. Joseph Board of Public Schools to levy a tax in excess of the rate as restricted by Section 11 of the Constitution, said:

"Any construction, which makes these constitutional restrictions dependent on legislative action, destroys their vitality. The legislature may not see proper to pass any laws affording an opportunity to the voters to increase the school tax to 100 per cent. in cities and towns, and 65 per cent. in county school districts; and, if it is conceded that the restriction to 4 mills on the dollar needs legislation to enforce it, because the process by which this rate of taxation may be increased does, then, in the absence of any legislation, there is no limit, and these provisions of the constitution are lifeless. After the 1st of July, 1877, the laws inconsistent with them are repealed; but, if no legislation occurs, and the position that legislation is needed to enforce the restriction is a correct one, then both the restriction and the proviso are inoperative, and the legislature may regulate the rate of taxation at their pleasure.

The legislature already possessed the power of limiting taxation to the maximum adopted in the constitution; but it was not the object or intention of the framers of the constitution to leave these limits to legislative discretion; but to declare constitutional limits, which, until removed in the mode pointed out in the constitution, should prevail

on its adoption. If the legislature and the people desire to increase this rate, a mode is provided by which it may be done; but, until this is done, the constitutional limit prevails."

There has never been any method of procedure prescribed by the General Assembly to be used by townships for voting bonds for the purpose of acquiring real property and erecting buildings.

The election mentioned in your inquiry by which the township may vote bonds for road purposes is authorized by Section 23 of Article X of the Constitution and, pursuant to that authority the General Assembly has prescribed the method, Section 7960 and following Revised Statutes 1929.

Conclusion: It is the conclusion of this Department, that no method of procedure having been directed by the General Assembly a township cannot hold a special election for the purpose of voting bonds and erecting a building.

Respectfully submitted,

WOJ:CP

W. O. JACKSON,  
Assistant Attorney General.

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General.