

MUNICIPAL CORPORATIONS: Sections 6948 and 7108, R. S. Mo., 1929,
TOWNS AND VILLAGES: Sections 11 and 12, Article X of
the Const. of Missouri, construed as
to limitations of tax levy on cities,
towns and villages.

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Mr. Oscar Jennewein
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Dear Sir:

We are in receipt of your request for an opinion under date of July 9, 1940, and also your letter of explanation. Your request reads as follows:

"I am a resident of the Village of Rock Hill in St. Louis County. The unofficial estimate of our population according to newspaper reports of the 1940 census is approximately 1800.

"I am very much interested in securing accurate information in regard to the tax limit for general purposes which can be levied by our Village Board. In the 1929 revised statutes of the State of Missouri, I find, under Section 7109, that the maximum tax rate that can be levied by a Village is 25¢ on \$100.00 of assessed valuation but that this rate can be increased, by a proper vote of the voters of the Village, within the limits specified in the constitution.

"Upon referring to the constitution, Article 10, Section 11, I find that for communities between 1000 and 10,000 in population, the maximum tax rate is 50¢ on the \$100.00 of assessed valuation.

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"I do not know if there have been any changes in these provisions because I do not have a copy of the supplements since 1929 and I am, therefore, writing you to find out if these provisions still are in effect. I would also like to know if the 50¢ limit mentioned under Section 11 of Article 10 of the constitution includes the levy for a bond issue. Our Village, at the present time, is levying a tax of 30¢ to retire a sewer bond issue and 20¢ for general revenue. It is my contention that the general revenue could be increased to 50¢, provided it were acceptable to the voters, and that the 30¢ levy for the bond issue could also be maintained."

Your letter of explanation reads as follows:

"Replying to your letter of July 25th in regard to my inquiry on the tax question of the Village of Rock Hill, I wish to inform you that the Village of Rock Hill is not a city of the 4th Class but remains a Village.

"The Village of Rock Hill is one of many small incorporated communities in St. Louis County just outside of the City of St. Louis. However, it does not border upon the City of St. Louis, the cities of Brentwood and Maplewood intervening between the Village of Rock Hill and the City of St. Louis itself. As a matter of fact the Village of Rock Hill is completely surrounded by cities of the 4th Class. These being Ladue on the North, Kirkwood and Glendale on the West, Webster Groves on the South, and Brentwood on the East."

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Section 6948 R. S. Missouri, 1929, provides in part as follows:

"* * * If such report shows that the city has less than 10,000 inhabitants, the city council may levy on all subjects and objects of taxation for city purposes not to exceed fifty cents on the one hundred dollars valuation. Should the population be one thousand or less, said rate of levy shall not exceed twenty-five cents on the one hundred dollars valuation. * * * "

"Provided, however, that nothing herein shall apply to cities of the fourth class adjacent to adjoining or bordering on cities which now have or may hereafter have five hundred thousand inhabitants or more."

It will be noted that this section applies to incorporated cities of the fourth class and contains a proviso that it is not applicable to cities of the fourth class adjacent to, adjoining or bordering on cities which now have or may hereafter have 50,000 inhabitants, or more.

Your letters indicate that Rock Hill is an incorporated village. Therefore, in reading Section 7108 R. S. Mo., 1929, we find that this section provides in part as follows:

"* * * * and it shall be the duty of such board of trustees to establish by ordinance the annual rate of tax levy for the year, which shall not be in excess of twenty-five cents on the one hundred dollars valuation. * * * * *"

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Your first letter makes reference to the fact that the council is levying thirty cents to retire sewer bonds and twenty cents for general revenue. You raise the question as to whether or not this is in violation of Section 11, Article 10, of the Constitution of the State of Missouri.

We also call your attention to the case of State v. City of Mound City, 73 S. W. (2d) 1017, as a matter of reference.

In the case of Lamar Water and Electric Light Company v. City of Lamar, 128 Mo. 188, the court had this to say in the minority opinion found on page 194, commenting on the earlier case of State ex rel v. Town of Columbia, 111 Mo. 365, which comment is included in this opinion for the purpose of reference:

"In that case the town proposed, pursuant to a two thirds vote, to issue bonds for the purpose of building waterworks and an electric light plant, and to levy and collect annually a special tax over and above the general tax of fifty cents on the \$100 valuation to pay the interest on the bonds, and to create a sinking fund to pay the principal. Our conclusion in that case was that fifty cents on the \$100 valuation is the highest rate that can be levied by cities and towns of more than one thousand and less than ten thousand inhabitants for any and all purposes, except for the purpose of erecting public buildings, and except for the purpose of paying indebtedness which existed at the date of the adoption of the constitution; that is to say, in 1875. It was therefore, held that the proposed additional tax would be illegal, because in excess of the constitutional rate limit.

"That case disposes of the exact question which we now have in hand. According to the

ruling then made, the ordinance in this case and the contract sued upon are utterly void in so far as they provide for the levy and collection of this special water tax of forty cents on the \$100 valuation. * * * "

However, in reading this case it will be found that the case was transferred to the court en banc and Judge Barclay, in his opinion, which will be found commences at page 209, in construing Sections 11 and 12, Article 10, of the Constitution of the State of Missouri, had this to say: (l. c. 220,221 and 222)

"It seems first of all necessary that the funds, permitted by section 11 to be raised, for the legitimate, ordinary purposes of the government, should be preserved from invasion or diminution by any tax levied under section 12. Experience demonstrates that the limitations of section 11 are narrow enough even as applied to the general needs of the municipalities which that section governs. The provisions of section 12 were not designed to cut down the annual revenue intended for the ordinary wants of the local governments. But such a cutting down would be imperative, if the first alternative ruling, already discussed, were adopted.

"On the other hand, the terms of section 12 are not so drawn as to permit the conclusion that the tax levied under them was intended to be any such myth as it would be if it depended only on a surplus remaining, each year, from the rates levied under section 11.

"The only escape from these results is in the reading of those sections which we have above attempted to justify, namely: That the tax expressly authorized in the last lines of sec-

tion 12 may be imposed in excess of the rates named in section 11, if the other limitations in section 12 are observed.

"We believe also that a due consideration of the exceptions to the rate limitations of section 11 and of the exceptions in section 12 will tend to show that section 12 was never designed to be operative merely within the limits as to rates defined in section 11.

"But we do not regard that point as requiring further development at this time, in view of the other reasons that support our conclusion.
* * * * *

"Our judgment is that the ruling in the Columbia case should no longer be followed, and that we should adopt a position which will recognize the force of all parts of sections 11 and 12.
* * * * *"

See Consolidated School District v. Day, 328 Mo., 1105 l. c. 1115, for a distinction.

CONCLUSION.

In conclusion, we are of the opinion that Section 7108, R. S. Mo., 1929, providing for the levy of twenty-five cents maximum on each one hundred dollars valuation is controlling in the situation outlined in your letters, and further, that the city council is not violating Sections 11 and 12, Article X, of the Constitution of Missouri

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in levying the thirty cents additional on the one hundred dollars valuation to procure money to retire a sewer bond issue.

Respectfully submitted,

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APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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