COUNTY COURT:
MINERAL LEASES:
COUNTY COLLECTOR:

(1) Member of county court or other county officer cannot buy county warrants at less than par. (2) If member of county court votes for employment of a relative within 4th degree, by consanguinity or affinity, he forfeits his office. (3) Where mineral leases have been made, taxes should be assessed to owner of land. (4) Sec. 11107, R.S. 1939, has no application to Maries County. (5) Without a vote of the people, tax rate cannot be increased in any year so it will produce mathematically more than 10% in excess of taxes levied for previous year.

February 18, 1947

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Honorable Hamp Rothwell
Prosecuting Attorney
Maries County
Vienna, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"Please let me have your opinion on the following questions:

"First: Can a member of the County Court or any other officer of the County buy protested warrants issued by the County Court?

"Second: Can the County Court employ any member of his immediate family to work for the County on the county roads in any capacity whatsoever.

"Third: There are a number of private companies or corporations who have leases on certain real estate in Maries County for the purposes of mining fireclay. These companies have never paid any taxes of any kind for carrying on this work in Maries County. Some of the companies bought the land outright, taking a warranty deed, but most of them merely leased the mineral rights. Where the companies own the land in fee simple of course they pay taxes on the land. What is the method of assessing these mineral leases?

"Fourth: Our County Collector collects county taxes each year to an amount between sixty and

eighty thousand dollars and paragraph seven of section 11106 sets the fees he may collect on any amount between these two figures. Please refer to section 11107 and let me know what per cent he would be entitled to out of which to pay his deputy hire.

"Five: The County Court on August 26th, 1946, reduced the tax levy from 50¢ on the one hundred dollars valuation, to 30¢ on same. The record of their action reads as follows: 'Ordered by the Court that the following levy be set on roads and county revenue and courthouse bonds: county revenue, 30¢; courthouse bonds, 5¢; county roads, 35¢; all special roads, 35¢. Objection made by Frank Laubert opposed of setting 20¢ levy on county revenue, cast his vote in favor of 50¢ levy on county revenue.' This is all of the record. The record does not disclose how many members of the court were present and does not set forth their vote.

"The cutting of this levy was made out of pure spite and by the two members who were not re-elected to office. No one objected to the payment of 50¢, which levy permitted all county bills to be paid. Can the County Court fix the levy back to 50¢ on the hundred or can they only increase it 10% which would make it 33¢ on the hundred? I would like very much to have your opinion as soon as possible."

Section 4486, R. S. Mo. 1939, provides as follows:

"Every clerk of a court of record, sheriff, marshal, constable, collector of public revenue, or deputy of any such officer, or a judge of a county court, prosecuting attorney or county treasurer, who shall traffic for or purchase at less than the par value or speculate in any county warrant issued by order of the county court of his county, or in any claim or demand held against such county, shall be adjudged guilty of a misdemeanor, and shall, upon conviction, be punished by fine not less than twenty nor more than fifty dollars."

From the provisions of this section, it is clear that if a member of the county court, or any county official listed in said Section 4486, purchases county warrants for less than the par value, he is guilty of a misdemeanor.

Section 6 of Article VII of the Constitution of Missouri of 1945 provides as follows:

> "Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

In the case of State ex rel. v. Becker, 81 S. W. (2d) 948, a cousin of one of the St. Louis Court of Appeals judges was elected by the other two judges as commissioner, the judge to whom the commissioner was related not voting. The Supreme Court said in that case, l. c. 949-950:

> "In the petition it is stated substantially that Judges Becker and McCullen, who constitute the majority of the judges of said court, in so exercising the court's power of appointment in the manner threatened, are entirely free from any connivance, agreement, or conspiracy with Judge Hostetter, or with each other or with any one else, and hold the judicial view that the action which they are about to take in the premises lies within their judicial powers and discretion; that such reappointment is proper and lawful and not within the inhibition of said constitutional provision. But it is alleged in the petition that, nevertheless, such action upon their part will violate said constitutional provision and will, therefore, be in excess of their jurisdiction in the premises. And this is the issue for determination.
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> "The constitutional provision in question (article 14, section 13) provides: 'Any public officer or employee of this State or any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint

> to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment.'
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> * * * * *
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> "The relator takes the position that the true meaning of said provision, as decided in that case, would render the appointment of Commissioner Sutton by the two members of the Court of Appeals not related to him just as obnoxious to the provision as if one of the two were related to him; this, notwithstanding the fact that the third member, who is related to the proposed appointee, declines to participate in any manner in the purpose of his associates or in aid of the result of the combined action of the two."

The court further said, l. c. 951:

> "Now, in the instant proceeding, it is freely conceded that in the intended appointment there is not in fact or in semblance any connivance, agreement, confederation, or conspiracy between the majority members of the Court of Appeals as between themselves or as between them, on the one hand, and the non-voting member on the other, or any common design between any two of them, that the two should accomplish in behalf of any or all a prohibited purpose. The sum of the matter is that Judges Becker and McCullen are about, honestly and in good faith, to exercise their official power in securing for the Court of Appeals the continued and uninterrupted services of a commissioner whose record of integrity of character, untiring industry, and distinguished judicial service, has met with the unqualified approval alike of his associates on the Court of Appeals and the bench and bar of the state.
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> "In view of the foregoing considerations, we are of the opinion that the threatened action

> of the respondents is not beyond or in excess of their jurisdiction as members of the St. Louis Court of Appeals and is not in violation of section 13 of article 14 of our State Constitution.

The reasoning in the above quoted case under the nepotism section of the Constitution of 1875 applies equally to the provisions of Section 6 of Article VII of the Constitution of 1945.

Therefore, if a person related to one of the members of the county court within the fourth degree, by consanguinity or affinity, is employed by the other two members of the county court, and the related member does not vote, the employment does not violate the Constitution of Missouri. However, if the related member votes for such employment, Section 6 of Article VII of the Constitution is violated, and such member of the county court thereby forfeits his office.

In regard to the assessment of the leases of the companies in Maries County that are mining fireclay, we are enclosing a copy of an official opinion of this department rendered under date of May 28, 1937, to Honorable J. H. Mosby, Prosecuting Attorney, Linn, Missouri, which we believe answers the question propounded in your opinion request.

Section 11107, R. S. Mo. 1939, provides as follows:

> "That the officers referred to in section 11106, in addition to the maximum amount of fees and commissions permitted to be retained by county collectors as provided in section 11106, Revised Statutes of Missouri for 1939, each such officer may retain for the payment of deputy and/or clerical hire a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions which such officer is permitted to retain by said section as so amended, but such deputy and/or clerical hire shall be payable out of fees and commissions earned and collected by such officer only and not from general revenue."

Section 11106, R. S. Mo. 1939, provides that the collector, except in counties where the collector is paid a salary, shall receive as full compensation for his services in collecting the revenue, except back taxes, certain commissions. Maries County falls within subdivision 7 of Section 11106, and we note that the maximum that can be earned by the collector under that sub-

division is twenty-five hundred dollars per year. Subdivision 15 of Section 11106 provides that the maximum that may be retained by a collector of a county which falls in subdivision 7 is twenty-five hundred dollars a year. Therefore, the Collector of Maries County may retain the maximum amount that he can earn under Section 11106 for current taxes.

Section 11106, when reenacted in 1933 as Section 9935, Laws of 1933, page 454, provided "that the limitation on the amount to be retained as herein provided shall apply to fees and commissions on current, back and delinquent taxes." Section 11106 was reenacted as Section 9935 in Laws of 1937, page 547, and provided "that the limitation on the amount to be retained as herein provided shall apply to fees and commissions on current taxes, but shall not apply to commissions on the collection of back and delinquent taxes."

Section 11107 was reenacted as Section 9935a, Laws of 1935, page 406. When Section 11107 was first reenacted in 1933, the twenty-five hundred dollar limitation in Section 11106 applied to fees and collections on both current and back and delinquent taxes. Under Section 11107, it was possible then for the amount from fees and collections from current and back and delinquent taxes to amount to more than twenty-five hundred dollars a year, and the excess over twenty-five hundred dollars a year to the amount of twenty-five per cent, or six hundred twenty-five dollars, could be retained by the collector for clerk hire. When Section 11106 was reenacted in 1937, however, making the limit in Section 11106 apply only to current taxes, Section 11107 became surplus, since not more than twenty-five hundred dollars could be earned by the collector of a county which falls in subdivision 7, and the entire twenty-five hundred dollars could be retained by the collector.

Therefore, Section 11107, at the present time, has no application to Maries County.

Section 11(b) of Article X of the Constitution of 1945 provides as follows:

> "Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:
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> "For municipalities--one dollar on the hundred dollars assessed valuation;
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> "For counties--thirty-five cents on the hundred

> dollars assessed valuation in counties having three hundred million dollars, or more, assessed valuation, and fifty cents on the hundred dollars assessed valuation in all other counties;
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> "For school districts formed of cities and towns--one dollar on the hundred dollars assessed valuation, except that in the City of St. Louis the annual rate shall not exceed eight-nine cents on the hundred dollars assessed valuation;
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> "For all other school districts--sixty-five cents on the hundred dollars assessed valuation."

Section 11046 of House Bill No. 468 of the 63rd General Assembly provides as follows:

> "For county purposes the annual tax on property, not including taxes for the payment of valid bonded indebtedness or renewal bonds issued in lieu thereof, shall not exceed the rates herein specified: In counties having three hundred million dollars or more assessed valuation the rates shall not exceed thirty-five cents on the hundred dollars assessed valuation; and in counties having less than three hundred million dollars assessed valuation the rate shall not exceed fifty cents. Provided, however, that no county court shall order a rate of tax levy that will produce mathematically more than ten per cent in excess of the taxes levied for the previous year. Provided, further, that in any county the maximum rates of taxation as herein limited may be increased for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors of the county voting thereon shall vote therefor."

Section 11046 of House Bill No. 468 is a further specific limitation of the maximum tax rate expressed by the Legislature. Without a vote of the people, the tax rate in Maries County cannot be set by the county court at a rate which will produce mathematically more than ten per cent in excess of the taxes levied for the previous year.

The record of the levy of the taxes for Maries County, as shown by the record of the County Court on August 26, 1946, does show that the said levy was made by the county court, and all members of the court must have been present and voted on such levy, since one member voted in favor of a fifty cent levy for county purposes, but the order of the court was that the tax rate for county purposes should be thirty cents. The record of the county court is the authorization of the tax levy. The taxes in Maries County for 1946 can be paid on no other basis.

Therefore, the fact that the record of the levy might be considered rather incomplete cannot nullify the fact that the tax rate for Maries County for 1946 was set at thirty cents for county purposes. Certainly, after the action of the county court in levying a tax rate of thirty cents for county purposes has been acquiesced in since August, 1946, and taxes paid by the taxpayers under this levy, no attack could now be made on the validity of the setting of such tax rate.

The provision of Section 11046 of House Bill No. 468 reading:

> "* * * Provided, further, that in any county the maximum rates of taxation as herein limited may be increased for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors of the county voting thereon shall vote therfor"

would enable Maries County, by a two-thirds vote, to increase the tax rate as limited by the provision of Section 11046 that "no county court shall order a rate of tax levy that will produce mathematically more than ten per cent in excess of the taxes levied for the previous year," for a period of not to exceed four years. This provision is, in our opinion, as much a maximum tax rate as is the general thirty-five cent or fifty cent limits found in the same section.

CONCLUSION

It is the opinion of this department that:

(1) A member of the county court, or any other county officer listed in Section 4486, R. S. Mo. 1939, cannot buy county warrants at less than par value.

(2) If a relative within the fourth degree, by consanguinity

or affinity, of a member of the county court is employed by the county, and the related member does not vote for such employment, the Constitution has not been violated. If the member of the county court votes for his relative, he forfeits his office.

(3) The land in Maries County the mineral rights of which have been leased should be taxed to the owner of the property.

(4) Section 11107, R. S. Mo. 1939, has no application to Maries County.

(5) Without a vote of the people of Maries County, the tax rate for county purposes for 1947 cannot be set at a rate that will produce mathematically more than ten per cent in excess of the taxes levied for 1946. If an election is held under the provisions of Section 11046 of House Bill No. 468, and a two-thirds majority is secured at such election, the tax rate may be set at any figure which the people vote for.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
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