

**TAXATION:  
FIXING THE LEVY BY THE COUNTY  
COURT:**

The levy for taxes made by the county court should only be in an amount sufficient to raise the desired funds. Any levy in excess of that amount is void to the extent in which it is excessive.

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December 29, 1938



Mr. Jos. L. Gutting  
Prosecuting Attorney  
Clark County  
Kahoka, Missouri

Dear Sir:

This is in reply to yours of the 23rd wherein you request an opinion from this department based upon the following letter:

"Enclosed you will find a statement from The Atchison, Topeka & Santa Fe Railway Company relative to an excess illegal tax of \$0.03 on the Hundred dollars valuation state and county taxes and also illegal taxes of the Town of Revere on lighting purposes as a current expense. Our County Court concedes that the latter is illegal, but as to the former, we are in doubt.

"The Santa Fe claims the county levied an excessive tax in that it would collect far more tax than is necessary to pay off the final installment of bonded indebtedness; that it is in excess and illegal by 3¢ on the \$100.00 valuation and therefore they do not have to pay this excess of 3¢ for it was illegal for the Court to assess 8¢ when 3¢ would more than pay it off and allow for 20% for costs of collection and deficiencies.

"We would like your opinion was to whether the levy of 8¢ was illegal to the extent of 3¢ or not and if therefore the railroad can refuse to pay the 3¢ and only pay 5¢. The telephone company is now also refusing to pay more than 5¢. Many tax payers have paid all the tax in full.

"Please give us an opinion as soon as possible."

The various subdivisions of the state are authorized by Article X to levy taxes to pay bonded indebtedness. By Section 12 of this article it is provided in part as follows:

"\* \* \* \* \* and provided further,  
That any county, city, town, town-  
ship, school district or other politi-  
cal corporation or subdivision of the  
State, incurring any indebtedness  
requiring the assent of the voters  
as aforesaid, shall before or at the  
time of doing so, provide for the col-  
lection of an annual tax sufficient to  
pay the interest on such indebtedness  
as it falls due, and also to constitute  
a sinking fund for the payment of the  
principal thereof, within twenty years  
from the time of contracting the same:  
\* \* \* \* \*

It was by the provisions of the foregoing clause of the Constitution that your county court was authorized to make a levy to pay the interest on the bonds and whatever bonds which fall due in the year of the levy. The levy should be of a sufficient amount only to pay the outstanding bonds and interest. Section 9871, R. S. Missouri, 1929, provides as follows:

"As soon as may be after the assessor's book of each county shall be corrected and adjusted according to law, the county

court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

Section 9872, R. S. Missouri, 1929, provides as follows:

"Whenever the county court ascertains the amount to be raised for county purposes, and fixes the rate of county taxes, it shall cause the same to be entered of record, so as to show the whole amount to be raised, and the proportion which the rates of the county tax bear to the rates of the state tax on the same subject of taxation; and the collector shall make settlement with the county court for county revenue at the same time that he is required to settle for state taxes."

From your letter it appears that the only objection made to the levy made by the county court to pay the interest and premiums on the outstanding bonds is that the court has levied more than is needed for that purpose.

We find the rule stated in Volume 61 Corpus Juris, page 569, par. 696, in the following language:

"Subject to the restriction that the constitutional or statutory requirements be complied with in regard to the manner or mode of determining and fixing the amount or rate, and as to the limitation of such amount or rate, the amount levied should be commensurate with public needs, and such a rate of taxation should be fixed as will produce

the amounts required to be raised; and is illegal as to any excess over the amount necessary to produce the funds required to be raised. Within these limitations the levying board, provided it uses sound business judgment, may exercise a reasonable discretion in determining what amount or rate of taxes shall be raised for any general or particular purposes; and in determining such amount it should consider and deduct funds on hand which are available and applicable to the purpose or purposes for which the tax is being levied. But the mere fact that there is a considerable balance in its treasury does not, of itself, invalidate, to the extent of that sum, a levy for particular purposes where it cannot be presumed that such balance is available for such purposes, and the mere fact that in estimating, in advance, the amount that may be necessary for any purpose a larger amount is levied than is actually required does not invalidate the whole levy, unless the amount levied is so grossly excessive as to show a fraudulent purpose in making the levy; and whether the levy is so grossly excessive as to constitute a fraud in law on the taxpayers is to be determined not from the fact that it subsequently develops that a larger amount was levied than was actually required, but from the facts existing at the time the levy was made.

"For the purpose of insuring that the amount actually needed for the purpose to which it is to be applied will be raised and in the treasury, the levying authorities, in fixing the rate of taxation, may allow a reasonable rate for loss and cost of collection, that is, for uncollected taxes and commissions

of the taxing collector, for delinquencies to the state, or to meet unforeseen contingencies. In making such allowance, sound business judgment should be exercised in estimating the amount necessary to be raised for such loss and costs of collection, and this amount must be small in proportion to the entire tax, and cannot be added to so as to extend the rate beyond the limit fixed by statute, or in excess of that necessary to produce the several amounts authorized to be raised and expended; and where it is clearly shown that the board has abused its discretion and levied a greater rate than necessary for such loss and cost, the rate will be held invalid to the extent shown to be unnecessary. The loss and cost item is to be included in the minimum rate and is subject to reduction."

In the case of State ex rel. and to Use of Johnson, County Treasurer, v. St. Louis & S. F. R. Company, 10 S. W. (2d) 918, the court had under consideration the question of whether or not the county court, in fixing a levy, had abused its discretionary powers in not taking into consideration a sum of money which was in a closed bank and belonged to the fund for which the levy was made, and in that case the court, at l.c. 920, quoted Judge Ragland in the same case which was cited in 315 Mo. 430, in the following language:

"Exactions from the people, as taxes or otherwise, in advance of any needs of the government are not only condemned by sound public policy but are violative as well of fundamental rights guaranteed by our organic law. The County Court of Cass County was therefore without power to levy a tax clearly in excess of what could at the time have been reasonably anticipated as necessary to pay the interest and principal of the funding bonds. However, the authority to determine what amount would be necessary for that purpose was vested in it,

and unless there was a clear abuse of this discretionary power, its action in the premises cannot be interfered with. In other words the amount levied must have been so grossly excessive as to constitute, constructively at least, a fraud upon the taxpayers. \* \* \* Whether, however, the levy was so excessive as to be constructively fraudulent must be judged not from the fact that it subsequently developed that a larger amount was levied than was actually required, but from the entire situation which confronted the county court at the time the levy was made. The amount required for the redemption of the bonds, principal and interest, as well as the amount that would be realized from the levy, had to some extent to be estimated in advance. In doing so it would be necessary to consider, among other things, the amount and availability of funds, already on hand, and the probable loss and the cost of collection of the tax to be levied. When a court is called upon to determine whether a given levy was so excessive as to be fraudulent, or the result of a gross abuse of discretion, not only should proof of such matters as these be received, but every existing fact and condition which the county court might have properly taken into consideration in fixing the amount is relevant and admissible in evidence."

This same case holds that the county court has a broad discretion in fixing the levy, but if it abuses that discretion, the appellate courts will interfere.

It seems from the authorities cited in *Corpus Juris, supra*, that if the taxing authorities fix the amount of levy and it is in excess of what is needed, then that part of the levy which is excessive is void. That being the case, if your county authorities have made a levy for more money than will be needed to retire the outstanding bond

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and pay the interest, then the levy is void to the amount that it is excessive.

If the figures and calculations are correct which the railroad officials submitted to you and which you have enclosed with your request, then it seems clear that the court has made a levy in excess of the amount needed to pay the interest and premiums on the bonds and from the foregoing authorities it would seem that the levy would be void in the amount that it is excessive.

#### CONCLUSION.

From the foregoing, we are of the opinion that the levy by the county court for taxes to pay bonds or any other purpose should be only in an amount sufficient to raise the desired funds, and if the levy exceeds that amount it is void to the extent in which it is excessive.

We are further of the opinion that the county court in fixing the amount of the levy should take into consideration the balance in the bond and interest fund, if this amount is available and applicable for the purpose, and it should also take into consideration the loss on account of uncollected taxes and costs of collection of the tax, and any other item which would add to or take away from the fund for which the levy is made.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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