

SPECIAL ROAD DISTRICTS: Tax may not be levied on property subsequent to date of levy.

May 26, 1938



Hon. L. I. Morris
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Sir:

This department wishes to acknowledge your request for an opinion under date of May 25, 1938, wherein you state as follows:

"At the request of the Lafayette County Court and the Assessor your opinion is asked in the following matter.

The Higginsville Special Road District of Lafayette County, Missouri, is holding a bond election for the purpose of raising funds to improve the roads within that district. The election is to be held May 31, 1938.

It is respectfully requested that you inform us whether or not a tax may be levied on the property of this district for the current year. The court wishes to know whether or not the 1937 tax can be assessed and levied in this district."

We assume that the Higginsville Special Road District of Lafayette County, Missouri, is holding a bond election for the purpose of raising funds to improve the roads within the district under the authority of Section 7961 R. S. Missouri 1929, which provides in part as follows:

"If it shall appear that two-thirds of the voters voting at such election on said question shall have voted in favor of the issuance of said bonds, the board of commissioners of the special road district, or the county court, as the case may be, shall order and direct the execution of the bonds for and on behalf of such special road district or township, and shall provide for the levy and collection of a direct annual tax upon all the taxable property in said district or township sufficient to provide for the payment of the principal and interest of the bonds so authorized as they respectively come due. It shall be the duty of the clerk of the board of commissioners on or before the first day of May in each year, or the state auditor immediately thereafter, in case the clerk of the board of commissioners should fail or neglect, on or before the first day of May of each year, so to do, to certify to the county court of the county or counties, wherein such road district is situated, the amount of money that will be required during the next succeeding year to pay interest falling due on bonds issued and the principal of bonds maturing during such year. On receipt of such certificate it shall be the duty of the county court, or courts, at the time it makes the levy for state, county, school and other taxes, to, by order made, levy such a rate of taxation upon the taxable property in the road district, in such county or counties, as will raise the sum of money required for the purposes aforesaid. On such order being made it shall be the duty of the clerk of the county court, or courts, to extend such rate of taxation upon the tax books, against all of the taxable property in the district in such county or counties, and the same shall be collected by the collector of the revenue at the time and in the manner, and by the same means as state, county, school and other taxes are collected. At the time the county court is required to determine and levy the rate of taxation for state, county, school

and other taxes, to determine, order and levy such a rate of taxation upon the taxable property in any township in such county as may have outstanding bonds issued under this section as will be sufficient to pay interest and principal falling due during the next succeeding year. It shall be the duty of the clerk of the court to extend upon the tax books of the county such rate of taxation upon and against all of the taxable property in such township, and when so extended the same shall be collected by the collector of the revenue at the time, in the manner, and by the means that state, county, school and other taxes are collected. All of the laws, rights and remedies of the state of Missouri for the collection of state, county, school and other taxes, shall be applicable to the collection of taxes herein authorized to be collected."

The above statute provides that the Board of Commissioners must on or before the first day of May in each year, or the State Auditor immediately thereafter in case the Board should fail or neglect, certify to the County Court wherein the road district is located, the amount of money that will be required during the next succeeding year to pay the interest and principal on bonds.

Assuming that the bond issue obtained the necessary two-thirds vote, it might be said that it would be impossible for the Board or the Auditor to comply with the mandate of the statute inasmuch as the election was at a date subsequent, viz, May 31, 1938. As we view the statute, however, the same is merely directory for the reason that the date set by the Legislature does not seem to be essential as we will more fully show during the course of this opinion.

We find support for our view in the rule enunciated by the Court in the case of State ex rel. Hamilton vs. Hannibal and St. J. Railway Company, 113 Mo. 297, 1. c. 308, 21 S.W. 14, thus:

"When statutes direct certain proceedings to be done in a certain way or at a certain time, and a strict compliance with these provisions of time and form does not appear essential to the judicial mind, the proceedings are held valid, though the command of the statute is disregarded or disobeyed." In such case the statute is said to be directory. Sedgwick on Construction of Statutory and Constitutional Law, pp. 316, 317, 318; Dwarris on Statutes, 608-611; Beck vs. Allen, 58 Miss. 156; Counties vs. Railroad, 65 Ala. 394; Pond vs. Negus, 3 Mass. 230; Williams vs. School District, 21 Pick. 75."

The statute further provides that upon receipt of the certificate it is the duty of the County Court at the time it makes the levy for state and county purposes to levy upon the taxable property in the road districtas will raise the sum of money required by reason of the bond issue to improve the roads.

We must therefore determine the date of levy by the county court for state and county purposes.

Section 9871 R.S. Missouri 1929 (Section 12863 R. S. Missouri 1919) provides that the county court ascertain the sum necessary to be raised for county purposes and to fix the rate of taxes necessary to raise the amount needed:

"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 9874 R.S. Missouri 1929 (Section 12866 R. S. Missouri 1919) provides that at the May Term of each year the County Court is to appropriate, apportion and subdivide the revenue in part as follows:

"The county courts of the several counties of this state are hereby authorized and empowered, at the first regular term of such court after the taking effect of this chapter, and at the May term every year thereafter, to appropriate, apportion and subdivide all the revenues collected, and to be collected, and moneys received and to be received, in the various counties in the state, for county purposes,* * *"

In the case of State vs. St. Louis San Francisco Railway Company, 300 S.W. 274, l. c. 276, the Supreme Court in construing the above statutes determined that the levy by the County Court must be made at or before the May Term of Court, and said:

"Although the statute does not specifically provide that the county court shall make the levy of taxes for county purposes at any particular time, such time is quite limited perforce of other provisions. Section 12863, R.S. 1919, requires the county court to determine the sum necessary to be raised for county purposes and to fix the rate necessary to raise that amount as soon as may be after the assessor's books shall be corrected and adjusted according to law. This must be at or before the May term of each year, because, at that term, the county court is authorized and empowered to appropriate, apportion, and subdivide all of the revenues collected and to be collected, etc. Section 12866 R.S. 1919. The legislative intent that the levy should be made at or before the May term is thus quite manifest. State ex rel. Wabash Railroad Co., supra, loc. cit. 141 (158 S.W. 27)."

Section 9746 R.S. Missouri 1929, provides that property held June 1st is liable for taxes:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

The Court in the railway case supra, in holding that the levy to be made for county purposes at the May Term of Court is governed by the last assessment, which in this case would be June 1, 1937, said:

"Thus the county court is at least authorized and empowered to make the levy for county purposes at its May term and, in fixing the rate of such levy, the court is governed by the last assessment, which means the last assessment completed at the time such levy is made. It can mean nothing else. If the assessment for the current year is completed at the time the levy is made, well and good. That assessment can be used as the measuring rod to ascertain the rate which can legally be levied. If the assessment for the current year is not complete at that time, then the completed assessment for the previous year must be used."

The levy must therefore be made at or before the May Term of the County Court, based on the last assessment.

We have found only one Missouri case, City of Westport vs. McGee, 128 Mo. 152, which is in point in holding that property is not taxable for the current year if brought in after taxes have been levied. The Court said:

May 26, 1938

"A lien is given for municipal taxes, but there is nothing in the statute that justifies the claim that the lien for the city taxes relates to the date of the county assessment. On the contrary the city council must by ordinance establish the rate of taxes upon the county assessment, and there is no lien until the tax is levied and extended by the city council on its tax book. The question here is, were these lands within the corporate limits when the tax was levied. If they were, they are subject to city taxation. If lands are brought into the city after taxes have been levied upon the property of the city, the lands subsequently brought in are not subject to that levy.* * *"

Assuming that the bond issue has carried and the County Court has not yet adjourned its May Term, then if the Board certifies to the County Court during said term the amount of money that will be required, we are of the opinion that the County Court may yet and during the May Term make its order levying the tax on the property of the District for the current year based on the 1937 assessment.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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