

CITIES. : Words "previous year" in Sec. 6976, R. S.
: Mo., 1939, refer to previous year in which
: city actually levied a tax.

July 7, 1944

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Honorable H. J. Griffin
City Attorney
West Plains, Missouri

Dear Mr. Griffin:

This will acknowledge the receipt of your letter of June 24, requesting an opinion of this office, which is as follows:

"I am making this request as City Attorney of West Plains, Missouri.

"Please give me your opinion on Section 6976, Revised Statutes of the State of Missouri, 1939.

"The City officials of West Plains has not made a levy for taxes on personal or real estate located in said City since the year 1940. In other words there has been no levy made since the taxes for the year 1940. The levy for that year was 50¢ on the hundred dollar valuation.

"This section provides that the city council or any officer or officers acting therefor cannot 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.

"The city council may want to make a levy for the year 1945 and we are at a loss to just know what rate we can levy. If the city council should decide to make a levy of fifty cents on the hundred dollar valuation for the year 1945, being the amount of the last levy made, would this be legal under this section?

"I will appreciate it very much if you will give me your opinion about this matter and thank you very much for same."

Section 6976, R. S. Mo., 1939, provides:

"The council may by ordinance and at the expense of the city cause to be taken a census of its population by a suitable person to be appointed by the governor of the state. When so taken the result shall be reported to the council and spread upon the records and a copy thereof certified by the city clerk, under the seal of the city, shall be filed with the secretary of state. If such report shows that such city has 30,000 inhabitants or more, the city council may levy upon all subjects and objects of taxation for city purposes not to exceed one hundred cents upon the one hundred dollar valuation. Should the population be less than 30,000 and over 10,000 inhabitants said rate shall not exceed sixty cents upon the one hundred dollars valuation. Should the population be less than 10,000 inhabitants said rate shall not exceed fifty cents upon the one hundred dollars valuation. the foregoing are maximum rates which may be levied in said cities. Provided, however, the city council shall not have power to order a rate of tax levy on real or personal property for the year 1921 which shall produce more than ten per cent in excess of the amount produced, mathematically by the rate of levy ordered in 1920, and in no subsequent year may any such city council or any officer or officers acting therefor, 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 the qualified voters of any such city, by a majority vote, shall have power to fix any additional rate higher than above provided for within the limits prescribed by the Constitution at a general election or a special election called for that purpose. City councils are hereby empowered to call and conduct a special election under the laws governing such elections as herein contemplated or submit a proposition for increase of levy, when in the opinion of such city council, necessity therefor arises, and shall submit any such proposition at either special or regular election when petitioned therefor by tax-paying citizens equaling in number one per cent or more of the qualified voters of the city, and the proposition shall be as follows:

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'For a levy for city purpose of _____ on the one hundred dollars valuation,' and 'against a levy for city purpose of _____ on the hundred dollars valuation.'

The answer to your question would depend on an interpretation of the following clause "And in no subsequent year may any such city council or any officer or officers acting therefor, order a rate of tax levy that will produce mathematically, more than the ten per cent in excess of the taxes levied for the previous year." Inasmuch as you have not levied a tax since 1940, your question is whether the statute by "previous year" means the previous year in which a tax was levied or whether it means the immediately preceding year, which would be in this case, 1944. Your levy for 1940 was 50 cents on the hundred dollar valuation, which under the statute is the maximum levy for a city of the size of West Plains.

You made no levy for 1944, and therefore, if it were to be held that the words "previous year" meant preceding year, you probably couldn't make a levy, inasmuch as it could well be argued that 10% in excess of nothing, would still be nothing.

It doesn't seem that the legislature would have intended such a situation. The ten percent feature was not placed in the law to prevent the cities levying taxes, but to prevent a sudden jump in taxes.

The first paragraph of this statute gives cities the power to levy taxes. This is a general and permanent power. The later clause deals with the rate of increase. It does not give or take away the power to tax. To give it that feature would not be giving effect to the whole act. It is a cardinal rule as stated in *Graves v. Little Tarkio Drainage District No. 1*, 134 S. W. (2d) 70, that "effect must be given, if possible, to every word, clause, sentence, paragraph and section of a statute, and a statute should be so construed that effect may be given to all of its provisions, so that no part, or section, will be in operation, superfluous, contradictory or conflicting, and so that one section, or part will not destroy another.

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It is also stated in State vs. Wurdenan, 274 S.W. 407:

"The courts will not give a statute construction which would render it unconstitutional, absurd, or unreasonable, when it is susceptible of a constitutional or reasonable one.* * *"

In Clark v. Lancaster County, 96 N. W. 594, 1. c. 599, the court said:

"To hold that in each use of the word the year referred to whether "current" or "previous" is the year from one levy to another, the year for which it is really made, seems more reasonable."

CONCLUSION.

It is therefore the opinion of this office that the words "previous year" as used in Section 6976 R. S. Mo., 1939, refer to the previous year in which taxes were actually levied by the city.

Respectfully submitted

APPROVED:

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