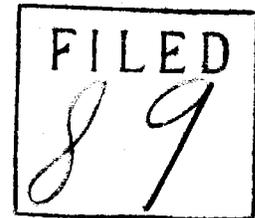


CONSTITUTION: Applicability of Sec. 11, Art. X, Constitution of 1945, with respect to maximum levies which may be made by cities of less than 10,000 population for the year 1945.

May 3, 1945



Honorable D. D. Thomas, Jr.
Prosecuting Attorney
Carrollton, Missouri

Dear Sir:

Reference is made to your letter under date of April 28, 1945, requesting an official opinion of this office, and reading as follows:

"The officials of several towns in Carroll County have asked that I request your office to issue an opinion on the proposition of whether or not such towns can now levy a tax of not to exceed \$1.00 on the \$100.00 valuation, as provided in Section 11 of Article X of the Constitution of Missouri, of 1945, or whether they must wait until legislation is enacted.

"These towns will all be preparing their tax schedules within the next few days. If it is possible for you to forward me an opinion by May 3rd, it will be greatly appreciated."

In connection with the consideration of the question you have proposed, we have taken note of the fact that Carroll County, Missouri, does not include within its boundaries a city larger in population than ten thousand.

It is provided by Article X, Section 11, of the Constitution of 1945 that municipalities will be permitted to adopt levies not greater than one dollar on the one hundred dollars assessed valuation. We quote the applicable portions of the Constitution of 1945:

"Section 11. Taxes may be levied by counties and other political subdivisions on all property subject to their taxing power, * * *.

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

"For municipalities--one dollar on the hundred dollars assessed valuation; * * * "

The maximum levy for cities of the fourth class is presently fixed by Section 7098, R. S. Mo. 1939, from which we quote, in part:

* * * * 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. The foregoing are maximum rates which may be levied in said cities and towns: * * * "

The maximum levies which may be made by towns and villages are presently fixed by the provisions of Section 7259, R. S. Mo. 1939, from which we quote, in part:

* * * * 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. The foregoing is the maximum rate any board of trustees shall have power to levy: * * * "

May 3, 1945

From consideration of the above quoted portions of the statutes, it is apparent that there now exists statutory limitations upon the maximum levies which may be made by cities, towns and villages in Carroll County, Missouri; and that such statutory limitations are inconsistent with the above quoted portion of the Constitution of 1945. In view of the fact that such statutory limitations do exist, we deem it pertinent to direct your attention to Section 2 of the Schedule appended to the Constitution of 1945, from which we quote, in part:

" * * * All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

By the express provisions of Section 2 of the Schedule appended to the Constitution of 1945, it is apparent that the present statutes fixing the maximum levies which may be made by municipalities such as are found in Carroll County, Missouri, will remain in full force and effect until July 1, 1946.

CONCLUSION

In the premises, we are of the opinion that in fixing the levies for the year 1945, the respective city councils and boards of trustees of the municipalities located in Carroll County, Missouri, must comply with the limitations imposed by such portions of Sections 7098 and 7259, R. S. Mo. 1939, as are applicable, and that Article X, Section 11, of the Constitution of 1945 will not apply to such levies so made in 1945.

Respectfully submitted

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:HR