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TAXATION: S. 11041, H.C.S.H.B. 468, 63rd General Assembly, does not authorize the circuit judge to order levy of 3¢ on \$100 for maintenance, operation and repair of county buildings when constitutional limit for county purposes has been levied.

April 18, 1947



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Honorable Harold L. Miller
Prosecuting Attorney
DeKalb County
Maysville, Missouri

Dear Sir:

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

"Respectfully request that we be furnished with your opinion on the following proposition involving taxation in DeKalb County:

"This County operates under Township Organization, and is at present levying the maximum provided by Section 11046, RS 1939, of 50 cents on the hundred dollars assessed valuation, for county purposes of which 20 per cent. is going to the various townships. At the present time, and for some time past this revenue has not been sufficient to operate, maintain and repair the County Buildings, namely, the Court House and County Poor Farm buildings, adequately, and in fact, not enough funds are raised to provide preventative maintenance. Our query is whether or not the Circuit Judge would be authorized to order an additional levy of \$0.03 on the one hundred dollars assessed valuation for such purpose, if proper action requesting such additional levy was taken under Section 11041, RS 1939."

Section 11040 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly provides as follows:

"The following named taxes shall hereafter be assessed, levied and collected in the

several counties in this state, and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state, viz.: The state tax and taxes necessary to pay the funded or bonded debt of the state, county, township, municipality, road district, or school district, the taxes for current expenditures for counties, townships, municipalities, road district and school districts, including taxes which may be levied for library, hospitals, public health, recreation grounds and museum purposes, as authorized by law."

Section 11041 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly provides, in part, as follows:

"No other tax for any purpose shall be assessed, levied or collected, except under the following limitations and conditions, viz.: The prosecuting attorney or county counselor of any county, upon the request of the county court of such county--which request shall be of record with the proceedings of said court, and such court being first satisfied that there exists a necessity for the assessment, levy and collection of other taxes than those enumerated and specified in the preceding section--shall present a petition to the circuit court of his county, or to the judge thereof in vacation, setting forth the facts and specifying the reasons why such other tax or taxes should be assessed, levied and collected; and such circuit court or judge thereof, upon being satisfied of the necessity for such other tax or taxes, and that the assessment, levy and collection thereof will not be in conflict with the Constitution and laws of this state, shall make an order directed to the county court of such county, commanding such court to have assessed, levied and collected such other tax or taxes, and shall enforce such order by mandamus or otherwise.
* * * "

Since Section 11040 provides the "taxes for current expenditures for counties" and Section 11041 provides that such Section

11041 is applicable only to taxes other than those enumerated and specified in Section 11040, and since taxes for operation, maintenance and repair of county buildings are taxes for current expenditures for counties, the proposed tax of three cents per one hundred dollars for operation, maintenance and repair of county buildings is not authorized by the provisions of Section 11041. The tax of three cents on the one hundred dollars is not authorized by the provisions of Section 11041 for the further reason that a tax authorized under the provisions of Section 11041 must be a tax within the constitutional limit, which is set in your county at fifty cents per one hundred dollars by Section 11(b) of Article X of the Constitution and Section 11046 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly.

In the case of State ex rel. v. Wabash Ry. Co., 169 Mo. 563, the facts were that the Ray County Court, for the years 1896 and 1897, levied for county purposes the constitutional limit of forty cents per one hundred dollars, and in addition levied a tax of twenty cents per one hundred dollars pursuant to an order by the Circuit Court made under authority of what is now Section 11041 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly, such additional levy being made to pay protested warrants of Ray County issued in prior years. The Supreme Court held that the twenty-cent levy was invalid, and said at l. c. 577:

" * * * Now, if under such circumstances, the county court had the power to make a special levy of twenty cents on the hundred dollars valuation of property in the county in addition to the levy of forty cents, the constitutional limit, it could of course upon the same theory and by the same authority levy fifty or one hundred per cent and thus ignore those wholesome provisions of our Constitution which were intended to protect the property rights of the people, and to prevent its confiscation by an evasion of that instrument. That no such purpose was contemplated by the statute is indisputable, but what was meant thereby was that a special levy in addition to a general levy, when the latter does not come up to the constitutional limit, may be made for the purpose of paying past indebtedness of the county, provided it, including the general levy, or the levy for general purposes, does not exceed the constitutional limit."

In the case of State ex rel. v. Railway Co., 296 Mo. 518, the Supreme Court said at l. c. 524:

" * * * Ever since their enactment the levy authorized by Section 12860 has been regarded as a special tax for county indebtedness in addition to the general levy for county purposes. In State ex rel. v. Wabash Ry. Co., 169 Mo. 563, it was held (syl.6):

" 'A proceeding in conformity with Section 7654, Revised Statutes 1889' (now Sec. 12860, R. S. 1919), 'is the proper course to pursue in order to require a county court to make a special levy for the purpose of paying outstanding and unpaid warrants, but a proceeding under that section does not make valid a levy in excess of the constitutional limit. What is meant by that section is that a special levy in addition to a general levy, when the latter does not come up to the constitutional limit, may be made for the purpose of paying past indebtedness.'

"See State ex rel. v. Ry. Co., 130 Mo. 243, 248; State ex rel. v. Miss. River Bridge Co., 134 Mo. 321, 338."

Section 12860, R. S. 1919, referred to in the above quoted case, is now Section 11041 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly.

Your attention is invited to that part of Section 11046 of House Committee Substitute for House Bill No. 468 providing as follows:

" * * * 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."

Under this provision, an additional tax may be voted by a two-thirds vote of the qualified electors voting at an election.

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CONCLUSION

It is the opinion of this department that a tax of three cents on the one hundred dollars for operation, maintenance and repair of the county courthouse and poor farm buildings cannot be ordered by a circuit judge under the authority of Section 11041 of House Committee Substitute for House Bill No. 468 of the 63rd General Assembly.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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