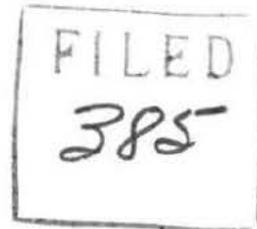


Answer by letter-Wieler

July 21, 1970

OPINION LETTER NO. 385

Honorable James P. Mulvaney  
State Representative  
District No. 29  
5717 Beldon  
Jennings, Missouri 63136



Dear Representative Mulvaney:

This is in response to your request for an opinion concerning the constitutionality of the imposition of a tax for fire protection services on the residents of a certain subdivision by two separate and distinct entities.

In connection with this request, you have detailed the following facts:

The Shannon Ridge subdivision was annexed by the City of Jennings, Missouri, on February 10, 1956. At the time of such annexation, Shannon Ridge was located within the Moline Fire Protection District. The residents of this subdivision have petitioned the Board of Directors of the Moline Fire Protection District for exclusion from that district pursuant to Section 321.310, RSMo 1959. A hearing on this matter was held December 3, 1969. Subsequently, the fire protection district has declined to exclude the Shannon Ridge residents from its jurisdiction. As a result, fire protection services are available to the subdivision from two sources, the City of Jennings and the Moline Fire Protection District. However, the residents of this subdivision are subject to tax for this service from both entities.

With respect to the above fact situation, you have outlined the following questions:

- "1. Are there further legal remedies available to the Shannon Ridge residents, not withstanding, that there is no provision for

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appeal from the decision of the Moline board, under Section 321.310, RSMo?

- "2. Is any constitutional provision violated by the imposition of a tax on the Shannon Ridge residents for fire protection services by two separate and distinct jurisdictions, namely, the City of Jennings and the Moline Fire Protection District? If so, to which of the two jurisdictions must the Shannon Ridge residents pay taxes for their fire protection service?"

In response to your first question, it is our opinion that it cannot be answered by this office inasmuch as it involves remedies to be used by private individuals seeking adjudication of individual rights. This is a matter for private counsel and not a proper subject for an opinion. See Section 27.040, RSMo 1959.

In answer to your second question, it is our opinion that the imposition of a tax on the residents of the Shannon Ridge subdivision for fire protection services by two separate and distinct jurisdictions does not violate any constitutional provisions. Article X, Section 1 of the Missouri Constitution provides that the taxing power may be exercised by political subdivisions in this state under the power granted to them by the general assembly. Under Section 321.230, RSMo 1959, the Moline Fire Protection District has the authority to levy and collect ad valorem taxes on property located within the district. Likewise, Chapter 94 of the Revised Statutes of Missouri provides statutory authorization for cities of the third class to levy and collect taxes for city purposes. It is our understanding that Jennings is a third class city and would therefore have the power to provide fire protection services pursuant to Section 77.190, RSMo 1959. The taxing power of the fire protection district is coextensive with the geographical boundaries of that district, and the taxing power of the city is coextensive with the city limits. The taxing powers and the boundaries limits of these two public corporations are fixed and established by general law.

Absent any statutory provisions, the taxing power of these two public corporations are not changed by operation of law merely as a result of the extension of the city limits. The only provision in the statutes dealing with the exclusion of city annexed property from fire protection districts is Section 321.320, RSMo 1959, which provides that any property located within the boundary of a fire protection district in a first class county which is now or hereafter included within a city having a population of 40,000 inhabitants or more, and which city is not wholly within the fire

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protection district and maintains a city fire department, is excluded from the fire protection district. In *Inter-City Fire Protection Dist. of Jackson County v. Gambrell*, 360 Mo. 924, 231 S.W.2d 193 (En Banc 1950), the Missouri Supreme Court held that taxes assessed by a fire protection district on property annexed by the City of Independence should have been extended on the tax books of the county by the county court as the law excluding this property from the district had not yet become effective. Therefore, it is clear that the residents of the Shannon Ridge subdivision are not relieved from taxes levied by the Moline Fire Protection District simply because of their annexation to the City of Jennings, unless such annexation comes within the provisions of Section 321.320. It is our understanding that it does not because the City of Jennings has a population of less than 40,000.

The question of the constitutionality of imposing a tax for the same or similar services by two separate taxing authorities was raised in *St. Louis County Library District v. Hopkins*, 375 S.W.2d 71 (Mo. 1964). In that case, the City of Florissant had annexed property lying in the St. Louis County Library District. The residents therein were therefore subject to a tax for the maintenance of a public library by both the City of Florissant and the St. Louis County Library District. Faced with the argument that the imposition of a tax for county library purposes on property annexed by a city maintaining a public, tax supported library was unconstitutional, the Missouri Supreme Court said (l.c. at 77):

"We find no constitutional impediment. The two taxes in question are imposed by law by two separate taxing authorities, the city library and the county library district. The two taxes would be applied uniformly to the area within the respective districts, both of which include the annexed area. 'The principle of uniformity is not violated by levying taxes by two overlapping taxing districts on the same property for similar purposes.' 1 Cooley, *Taxation*, Fourth Ed., § 324. The requirements of equality in taxation are met. The burden of the county library district tax falls equally and impartially upon all of the persons and property subject to it. 84 C.J.S. *Taxation* § 22 b., p. 77."

Therefore, we are of the opinion that the imposition of a tax on the residents of the Shannon Ridge subdivision by both the City of Jennings and the Moline Fire Protection District for fire protection services does not violate any constitutional provision.

Yours very truly,

JOHN C. DANFORTH  
Attorney General