

PENSIONS:
TAXATION (INTANGIBLE):
FIRE PROTECTION DISTRICTS:

A fire protection district located in a county of the first class may use the intangible personal property taxes it receives for pensioning of its firemen provided a majority of the qualified voters casting votes vote in favor of pensioning the salaried members of the fire department as provided under Section 321.600, RSMo 1969.

OPINION NO. 111

May 18, 1972

Honorable James Russell
Representative, District 25
700 Bellarmine Lane
Florissant, Missouri 63031



Dear Representative Russell:

This is in response to your request for an opinion from this office as follows:

"Under Missouri Statute Laws, Sections 321.220, 321.240, 321.600 and 321.610 the Florissant Valley Fire Protection District on April 8, 1969, put before the qualified voters of Said District for the pensioning of salaried members; having passed and been approved, the Florissant Valley Fire Protection has been putting a portion of Intangible taxes they receive in the pension fund.

"Under Chapter 321.(FIRE PROTECTION DISTRICT), Chapter 87(FIREMEN'S RETIREMENT AND RELIEF SYSTEMS) or any Missouri Statute Laws, is the Florissant Valley Fire Protection District allowed to use Intangible Taxes for the pension fund?"

Florissant Valley Fire Protection District is located in St. Louis County which is a first class county.

Section 321.600, RSMo 1969, which applies to first class counties, provides in part that the board of directors of a fire protection district located in a first class county may provide for the pensioning of the salaried members of its organized fire department and to provide for the payment of death benefits to the widows and minor children of its organized fire department or if such member is unmarried and without minor children, to his next of kin; and to provide for the payment of health, accident

Honorable James Russell

and disability benefits to such salaried members of its organized fire department who shall become disabled due to injury or disease incurred while in the performance of their duties, except that no board shall have the authority herein set forth until approved by the qualified voters of the district. It further provides that if a majority of the qualified voters casting votes thereon at the election be in favor the board shall then and thereafter effect such a program for the pension and benefit payments authorized at the election as shall be necessary for the operation of the district. (Emphasis supplied)

You state that on April 8, 1969, the qualified voters of the Florissant Valley Fire Protection District voted under provisions of Section 321.600, RSMo, in favor of pensioning the salaried members of the fire department, and you inquire whether moneys received by the fire protection district from the intangible taxes collected by the district can be used for the pension fund.

Section 321.610, RSMo 1969, which applies to fire protection districts in first class counties, provides in part as follows:

"To levy and collect taxes as herein provided, the board shall in each year determine the amount of money necessary to be raised by taxation, and shall fix a rate of levy which, when levied upon every dollar of the taxable tangible property within the district as shown by the last completed assessment, and with other revenues, will raise the amount required by the district annually to supply funds for paying the expenses of organization and operation and the costs of acquiring, supplying and maintaining the property, works and equipment of the district, and maintain the necessary personnel, which rate of levy shall not exceed thirty cents on the one hundred dollars valuation; may fix an additional rate, not to exceed five cents on the hundred dollars valuation, the revenues from which shall be deposited in a special fund and used only for the pension program of the district, by submitting the following question to the voters at any election in such district at which a member of the board of directors is to be elected or at any regular municipal or school election conducted by the board of election commissioners in such district:

OFFICIAL BALLOT

Instruction to voters:

Honorable James Russell

Place an (X) in one square.
Shall the Board of Directors of _____
Fire Protection District be authorized to levy
an annual tax rate of _____ cents per one
hundred dollars valuation, the revenues from
which shall be deposited in a special fund and
used only for the pension program of the dis-
trict?

YES

NO

provided, that if the question fails to receive
a majority of the votes cast, it shall not be
resubmitted to the voters within one year after
the election; . . ." (Emphasis supplied)

The first question is whether the general revenue may be used
for the pension fund or whether only the moneys received from a
special tax authorized under provisions of Section 321.610, RSMo,
by a vote of the people and deposited in a special fund and used
only for the pension program can be used for this purpose. It is
our opinion that general revenue may be used for the pensioning of
the firemen.

In *Decker v. Dimer*, 229 Mo. 296, 129 S.W. 936 (Mo. banc 1910),
the question involved the right of the county court to transfer
surplus funds of a county to a courthouse fund for the purpose of
constructing the courthouse. The statutes provided for the county
court of any county to build a courthouse if there shall be suffi-
cient funds in the county treasury for that purpose not otherwise
appropriated. The statutes also provided for a county to issue
bonds to obtain money to be used for building a courthouse. In
discussing this question, the court stated, l.c. 948, as follows:

" . . . We are further of the opinion that,
when all warrants and debts properly charge-
able to a fund in any one year are paid and
provided for, the residue of such fund is a
'surplus' within the purview of the transfer
sections. Is not the building of a courthouse
as legitimate as any other county purpose?
Are bonds so desirable that the people of a
Missouri county must bond themselves when
bonds are not necessary, or go without a
courthouse? Must they levy special taxes
when they have the means in the treasury to

Honorable James Russell

avoid such special levy? Running like a thread through the statutes is the idea of as low a rate of taxation as is compatible with the welfare of people, and the other idea that the county's business must be done for cash. All these ideas are conserved by the holding made." (Emphasis supplied)

Although the above case involved different statutes from those now being considered, we believe the same principles of law are involved and should be applied.

It is our opinion when the majority of qualified voters casting votes in an election held pursuant to Section 321.600, RSMo, the board of the fire protection district shall immediately thereafter provide a program for the pension and benefit payments authorized by the election as are necessary for the operation of such program. This is required of the board even though the additional five cent tax may or may not have been voted upon under Section 321.610, RSMo. It is our opinion, therefore, that the general revenue of the fire protection district may be used to pension the salaried firemen.

In answer to your question whether the funds received by the fire protection district from the intangible tax may be used for this purpose, it is our opinion that they may.

Article X, Section 4(c), Constitution of Missouri, 1945, provides:

"All taxes on property in class 3 [intangible personal property] and its subclasses, and the tax under any other form of taxation substituted by the general assembly for the tax on bank shares, shall be assessed, levied and collected by the state and returned as provided by law, less two per cent for collection, to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy."

Chapter 146, RSMo 1969, provides for a tax on intangible personal property the taxes collected to be distributed to each political subdivision according to the local rates of levy. The statutes are silent regarding the use of the tax.

The Supreme Court of Missouri, en banc, has interpreted the foregoing section in *State ex rel. Board of Directors of St. Louis Public Library v. Dwyer*, 234 S.W.2d 604 (Mo. banc 1950). That case

Honorable James Russell

involved an original proceeding in mandamus before the Supreme Court of Missouri, en banc, against the treasurer of the City of St. Louis, to require said treasurer to set apart for the Library Fund of the city free public library, a percentage of the amounts received from the State Director of Revenue for taxes collected pursuant to now Section 146.110, RSMo 1969. The court, in discussing the purposes to which the money collected as intangible taxes is to be put, stated as follows, l.c. 607:

" . . . However, the people voted this part of the City levy for the Library Fund; and, since the City had the right to have it considered in fixing its proportion of the taxes collected by the State at 175/266 in 1946, we see no reason why it should not have the right, and duty, to use the 4/266 (4/175 of its part), thus added and received, for the purpose for which the people voted it. . . ." (Emphasis supplied)

Additionally, on motion for rehearing in discussing the purposes to which the City of St. Louis was to put the amounts returned to it from the State Director of Revenue, the court stated, l.c. 607:

" . . . The Constitution, Sec. 4(c), art. X, Mo.R.S.A., requires the return of the intangible tax 'to the counties and other political subdivisions of their origin, in proportion to the respective local rates of levy.' The other 1945 Acts, cited in our opinion, provide how this shall be done. Harmonizing all of these provisions, we think it is clear that the rate of taxation on the assessed valuation of property, subject to ad valorem taxation, is intended to provide the basis for determining the amount and use of intangible tax revenue returned to each political subdivision; and we so rule." (Emphasis the Court's)

From the foregoing, it is the conclusion of this office that as to the amounts returned by the State Director of Revenue, collected as intangible taxes, these amounts are to be set apart and credited to the specific levy, in pro rata amounts, which provides the political subdivision's taxable basis.

It is our opinion that the intangible tax funds received by the Florissant Valley Fire Protection District becomes revenue of the fire protection district to be distributed pro rata to the

Honorable James Russell

funds for which the tax was levied, including the general revenue funds, and general revenue funds may be used to pension the firemen. We do not believe it was the intent of the legislature that the firemen's pension fund consist only of the revenues received as an additional tax rate under Section 321.610, RSMo. It is possible for the voters to vote in favor of pensioning the firemen under Section 321.600, RSMo, and it is not necessary to authorize a special tax under Section 321.610, RSMo. It is our view it is the intent of the legislature for the general revenue of the fire protection district to be used for the pensioning of the firemen as provided in Section 321.600, RSMo, and at the same time authorize an additional tax levy under Section 321.610, RSMo, to be levied after a vote of the people to be used only for the purpose of pensioning the firemen if the fire protection district does not have sufficient funds for this purpose without a special tax levy.

CONCLUSION

It is the opinion of this office that a fire protection district located in a county of the first class may use the intangible personal property taxes it receives for pensioning of its firemen provided a majority of the qualified voters casting votes vote in favor of pensioning the salaried members of the fire department as provided under Section 321.600, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General