

FIRE PROTECTION DISTRICTS: Section 321.244, RSMo 1986,  
PROPERTY TAX: relating to voter-approved  
TAX RATE ROLLBACK: property tax increases for fire  
protection districts, excepts fire  
protection districts from the provisions of Section  
137.073.5(2) (a) and (b), RSMo 1986.

July 13, 1988

OPINION NO. 74-88

The Honorable Tom McCarthy  
Senator, District 26  
State Capitol Building, Room 427  
Jefferson City, Missouri 65101



Dear Senator McCarthy:

This opinion is in response to your question concerning rollback of the voter-approved property tax rate increases for the Eureka Fire Protection District. The question you posed is as follows:

Did the Missouri Auditor properly rollback three cents (\$.03) of the 1987 tax levy of the Eureka Fire Protection District of St. Louis and Jefferson Counties, Missouri, under Missouri Revised Statute 137.073, concerning reassessment generally, where an increase in both the general and ambulance levies of said district had been voted upon and passed by the voters of the Eureka Fire Protection District, which propositions submitted to the voters were in conformance and compliance with Missouri Revised Statute 321.244, concerning fire protection districts specifically?

Based on information we have been provided, we understand that at the election on April 7, 1987, voters of the Eureka Fire Protection District, St. Louis and Jefferson Counties, Missouri, approved the following propositions:

Proposition No. 1: Shall the Board of Directors of the Eureka Fire Protection District be authorized to increase the rate of levy for funds to provide for the support of the district from forty-four cents (\$0.44) to seventy-five cents (\$0.75) on each one hundred dollars of assessed valuation?

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Proposition No. 2: Shall the Board of Directors of the Eureka Fire Protection District be authorized to increase the rate of levy for funds to provide for the support of emergency ambulance service of the district from eleven cents (\$0.11) to thirty cents (\$0.30) on each one hundred dollars of assessed valuation?

Substantiating documentation for the levy increases was forwarded to the Missouri State Auditor's Office for review. After reviewing the substantiating documentation, the Auditor's office determined that the fire protection district had failed to comply with the provisions of Section 137.073.5(2)(a), RSMo, and that as a result the tax rate ceiling was to be determined under the provisions of Section 137.073.5(2)(b), RSMo, resulting in the aforementioned rollback.

Chapter 137, RSMo, deals with the assessment and levy of property taxes. Section 137.073.5(2), RSMo 1986, provides in part:

(2) . . . In the year of general reassessment, the tax rate ceiling, as calculated under this section, of each political subdivision may be increased as follows:

(a) For political subdivisions in which the voters thereof approved an increase in the rate of levy which was advertised, in writing or by publication, or both, by the political subdivision as being based on assessed valuations in the year of general reassessment, the total increase in the rate of levy so approved by the voters of such political subdivision;

(b) For political subdivisions not included in paragraph (a) of this subdivision, the tax rate ceiling of such political subdivisions shall be increased by an amount which will generate the same amount of tax revenues as the increase approved by the voters of the political subdivision would have generated if such increase had been included in the rate of levy imposed in the year prior to general reassessment.

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Section 137.073.5 was amended to include subsections (2)(a) and (b) in 1985. See Conference Committee Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 463, 83rd General Assembly, First Regular Session (1985 Mo. Laws at 564) and Senate Committee Substitute for Senate Bill No. 152, 83rd General Assembly, First Regular Session (1985 Mo. Laws at 526). Section 137.073.5 was amended in 1986 by Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill Nos. 1022, 1032 and 1169, 83rd General Assembly, Second Regular Session, (hereinafter "House Bill No. 1022"), which was effective June 20, 1986. See 1986 Mo. Laws at 620-621.

Chapter 321, RSMo, deals with fire protection districts. Chapter 321 was amended to include Section 321.244 by House Bill No. 877, 83rd General Assembly, Second Regular Session, (hereinafter "House Bill No. 877"), which was effective April 30, 1986. See 1986 Mo. Laws at 869. Section 321.244, RSMo 1986 provides:

321.244 Reduced tax levy may be increased to maximum limits, by elections, ballot form.--1. Any fire protection district which has revised or reduced any levy which it has been authorized to impose under the provisions of section 321.225, 321.240, 321.241, 321.243, 321.610, or 321.620, under any provision of the constitution or laws of this state, may increase each such revised or reduced levy up to, but not in excess of, the maximum limits allowed under the section authorizing the rate of levy sought to be increased by submitting the following proposition to the voters of the district at any primary, general or special election:

Shall the board of directors of  
the . . . . . Fire  
Protection District be authorized to  
increase the rate of levy for . . . .  
. . . . .  
(Insert purpose of which tax is  
levied)  
  
from. . . . cents to . . . . .  
cents on each one hundred dollars of  
assessed valuation?

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\_\_\_\_\_ Yes  
\_\_\_\_\_ No

2. If any of the propositions submitted under subsection 1 of this section is approved by a majority of the voters of the district voting thereon, the board of directors may increase the levy which was the subject of such proposition to the amount authorized by such proposition.

Section 137.073.5 provides general provisions for the assessment and levy of property taxes for political subdivisions. Section 321.244, however, is a special provision relating in particular to fire protection district levies. Statutes on similar subject matters are regarded as in pari materia and must be considered together, even though enacted at different times and found in different places. ITT Canteen Corporation v. Spradling, 526 S.W.2d 11, 16 (Mo. 1975).

Section 137.073.5(2)(a) and (b) is in conflict with Section 321.244 to the extent that it imposes additional requirements on fire protection districts if they are to impose the full amount of the approved levy increase. The provisions of Section 137.073.5(2)(a) require fire protection districts to advertise that proposed levy increases will be based on assessed valuations in the year of general reassessment, and if they fail to do so then the tax rate ceiling will be set under the provisions of Section 137.073.5(2)(b). Resolution of your question revolves around which of the statutory provisions, Section 137.073.5(2)(a) and (b) or Section 321.244, is to be controlling.

The repeal of a special statute by implication through the enactment of a later general statute is not generally favored unless the legislative intent is fairly shown. Edwards v. St. Louis County, 429 S.W.2d 718, 721 (Mo. banc 1968). In this case, the legislative history does not indicate that the legislature intended to repeal the specific provisions of Section 321.244 by its enactment of the provisions of Section 137.073 by House Bill No. 1022 later in the same legislative session. The provisions of Section 137.073.5(2)(a) and (b) were substantively in effect following the 1985 amendment. The 1986 revisions to Section 137.073.5(2)(a) and (b) were very<sup>1</sup> minor and did not affect the substance of those provisions. Where an act is amended, those provisions which remain unchanged when reenacted are deemed to be a continuation of the former law. See State v. Ward, 40 S.W.2d 1074, 1078 (Mo. 1931); Wring v. City of Jefferson, 413 S.W.2d

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292, 300 (Mo. banc 1967). Because the substantive provisions of Section 137.073.5(2) (a) and (b) were in effect at the time that the legislature enacted House Bill No. 877, effective April 30, 1986, we conclude that the legislature in its passage of House Bill No. 877 containing the provisions of Section 321.244 intended to except fire protection districts from the provisions of Section 137.073.5(2) (a) and (b). Therefore, we conclude that Section 321.244 controls and the rollback in voter-approved levy increases required by Section 137.073.5(2) (b) does not apply to the levy increases of the Eureka Fire Protection District.

Conclusion

It is the opinion of this office that Section 321.244, RSMo 1986, relating to voter-approved property tax increases for fire protection districts, excepts fire protection districts from the provisions of Section 137.073.5(2) (a) and (b), RSMo 1986.

Very truly yours,



WILLIAM L. WEBSTER  
Attorney General

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<sup>1</sup>The 1986 revisions to Section 137.073.5 were as follows:

Substituted "required to revise rates of levy by subsections 2 and 3 of this section or section 22 of article X of the Constitution of Missouri shall calculate" for "shall annually calculate" and substituted "revision" for "rollback" in the first sentence of subsec. 5(2). Substituted "In the year of general reassessment" for "for fiscal year beginning in 1985" in the fifth sentence of subsec. 5(2). Substituted "assessed valuations in the year of general reassessment" for "1985 assessed valuations" in subsec. (5) (2) (a). Substituted "the year prior to general reassessment" for "1984" at the end of subsec. (5) (2) (b).