

TAXATION:

An election for a county library cannot be held if at that time the county court has levied to its full limitations under Section 11, Article X of the Constitution of Missouri.

REVENUE:

March 6, 1941



Miss Ruth O'Malley
Executive Secretary
Missouri Library Commission
Jefferson City, Missouri

Dear Miss O'Malley:

We are in receipt of your request for an opinion under date of March 2, 1941, which reads as follows:

"We have a letter from Mr. W. J. Burke of February 27 in which his opinion of March 26 on a point in the county library law, Chapter 110, Article 6, Sections 14767-14776, R. S., 1939, is further amplified. We understand from this later opinion that the conclusion intended is that where the constitutional limitation has been reached the county cannot vote on an additional levy under the library law.

"May we ask your further opinion on this point? We understand that the levies are made by the county court in their May term. Does this preclude the right of the citizens of a county to vote at the annual election held the first Tuesday in April on a levy to be made at a succeeding term of the court out of a General Revenue fund which has not yet been levied?

"May we ask an additional opinion regarding the petition which has been presented to the court as follows:

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"We, the undersigned taxpayers of Lafayette County, Missouri, in accordance with the provisions set forth in Section 13463, Revised Statutes of Missouri, 1929, being residents outside of the territory of all cities and towns in Lafayette County, Missouri, now maintaining a public library at least in part by taxation, do hereby petition the County Court of Lafayette County, Missouri, that a county district of the county outside of the territory of all such aforesaid cities and towns be established and be known as 'Lafayette County Library District;' and do further petition that an annual tax be levied for the purpose herein specified, such tax to be at the rate of $\frac{1}{2}$ mills on the dollar."

In our opinion given to you on March 26, 1940, we held that a levy could not be voted for county libraries in Lafayette County for the reason that that county had levied to its full limitation under Section 11 of Article X of the Constitution of Missouri.

In your present request you ask if an election could be held in April for a levy of one-half mill on the dollar for a county library and the county court could, in the May Term, make a levy less the one-half mill and the levy, under the election for a county library, would be valid. Under Section 14767, R. S. Missouri 1939, it specifically states:

"* * * * * and the tax specified in such notice shall, subject to provisions herein below of this section, be levied and collected, from year to year, in like manner with other taxes in the rural school districts of said county.
* * * * *

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Under the above partial section it specifically describes the election as a levy and since the county has levied to its full limitation, such an election for such purpose would be invalid under the holding in the case of Brooks v. Schultz, 178 Mo. 222, which case was set out in our opinion to you on March 26, 1940, in reference to this same matter.

In your request you also referred to a levy out of the general revenue fund. Money cannot be taken out of the general revenue fund for county library purposes for the reason that cities maintaining and taxing for city public libraries are exempt from the payment of any tax for county library purposes. I understand that Lexington and Higginsville have city libraries upon which the citizens of the cities are paying taxes. The election held under Section 14767, supra, applies to the district corresponding to rural school districts of the county. The money received under said election must be kept in a separate fund known as the "County Library Fund."

As stated before, your county library election cannot be held in April and be based upon a decrease of the levy made by the county court in May. One procedure can be followed, if consented to by the county court, which would permit the election to be held the first Tuesday in April. Section 11044, R. S. Missouri 1939, reads as follows:

"As soon as may be after the assessor's book of each county shall be corrected and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

Under Section 10964, R. S. Missouri 1939, the assessor starts his assessment on the first day of June and should return the assessment to the county clerk as

soon as completed and not later than the end of that year. It is not necessary that the county court receive the completed assessment from the assessor before levying the taxes. The levy can be made before May and as a gauge for the levying of the taxes may use the last assessment and it is not necessary that they await the assessment for this year. It was so held in *State v. St. Louis-San Francisco Ry. Co.*, 300 S. W. 274, par. 2, 3, where the court said:

"Although the statute does not specifically provide that the county court shall make the levy of taxes for county purposes at any particular time, such time is quite limited perforce of other provisions. Section 12863, R. S. 1919, requires the county court to determine the sum necessary to be raised for county purposes and to fix the rate necessary to raise that amount as soon as may be after the assessor's books shall be corrected and adjusted according to law. This must be at or before the May term of each year, because, at that term, the county court is authorized and empowered to appropriate, apportion, and subdivide all of the revenues collected and to be collected, etc. Section 12866, R. S. 1919. The legislative intent that the levy should be made at or before the May term is thus quite manifest. *State ex rel. Wabash Railroad Co.*, supra, loc. cit. 141 (158 S. W. 27).

"Thus the county court is at least authorized and empowered to make the levy for county purposes at its May term and, in fixing the rate of such levy, the court is governed by the last assessment, which means the last assessment completed at the time such levy is made. It can mean nothing else. If the assessment for the current year is completed

at the time the levy is made, well and good. That assessment can be used as the measuring rod to ascertain the rate which can legally be levied. If the assessment for the current year is not complete at that time, then the completed assessment for the previous year must be used."

This case was also followed in *State v. St. Louis-S. F. Ry. Co.*, 92 S. W. (2d) 644. In that case the court, at page 646, said:

"* * * * * We find nothing in any of the cases cited by appellant indicating that the assessments completed during a calendar year should be the proper basis for the making of the levy of the following year. The decisions point the other way. The Constitution reads: 'the last assessment.' Under the authority of *State ex rel. v. St. Louis-San Francisco Ry. Co.*, supra, that means the last completed assessment. The county court, in the case before us, used the last completed assessment that was available as a basis for the levy of the year 1931. Under that assessment it was authorized to make a levy of 50 cents on the \$100 valuation, because it was less than \$30,000,000."

Under the holding in the above two cases, if the county court sees fit it may levy taxes before the second Monday in April and deduct enough to take care of an assessment for a levy made by way of an election for a county library fund. It is not necessary that the county court wait until May to make the assessment as it may be made according to the above cases before the May Term and they may base their levy on the assessment of last year and not wait for the assessment of this year. The petition set out in your request follows Section 13463, R. S. Missouri

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1929, which is now Section 14767, R. S. Missouri 1939.
This petition is sufficient.

CONCLUSION

In view of the above authorities it is the opinion of this department that an election for a county library, under Section 14767, R. S. Missouri 1939, cannot be held where the present levy for taxes has been made to its full constitutional limits.

We further hold that the county court may levy before the May Term, and if the levy is made before the first Tuesday in April and is not to its full constitutional limits a valid election can be held on the first Tuesday in April for the purpose of voting a county library tax and the creation of a county library district.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

WJB:DA

APPROVED:

VANE C. THURLO
(Acting) Attorney General