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SPRINGFIELD

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FILE NO. S-314

TAXATION:
Rate Limitation

Honorable Bernard L. Oltman
State's Attorney
Tazewell County
Pekin, Illinois 61554

Dear Mr. Oltman:

I have your recent letter wherein you state:

"Tazewell County is contemplating either extensive renovation of its existing County Nursing Home or the construction of a new home.

"Authorization for such an act appears to rest in Chapter 34, Section 5362. Specifically, paragraph eight covers appropriation and the levy of taxes. I have two questions.

"(1). Are taxes levied under the authority of this Section considered as contributing toward the maximum rate limit for the County General Fund or does this section constitute additional authorization and an entirely separate levy?

"(2). If a separate levy is authorized, is there any limitation whatsoever as to the rate which may be levied?"

Paragraph 406 of chapter 34, 1969 Illinois Revised Statutes (sec. 25.05 of the Act to revise the law in relation to Counties) sets forth a statutory tax limit for counties. Subparagraph 8 of paragraph 5362 of chapter 34 (County Home Act) empowers the county board:

"To make appropriations from the county treasury for the purchase of land and the erection of buildings for the home, and to defray the expenses necessary for the care and maintenance of the home and for providing maintenance, personal care and nursing services to the patients therein, and to cause an amount sufficient for these purposes to be levied upon the taxable property of the county and collected as other taxes."

This provision of the County Home Act clearly gives the county board general power to erect and maintain a County Home and to that end empowers the board to make regular appropriations from the county treasury. Nothing in the language of the Act suggests a legislative intent to authorize operation of a County Home from an entirely separate tax levy, independent of the county's maximum rate limit. Therefore, it would appear that the erection and maintenance of a Home was considered by the legislature to

have been for a routine county purpose, expenditures for which are generally confined to the maximum rate limit for county taxation purposes as defined in Illinois Revised Statutes 1969, chapter 34, section 406. (See, Woodmen of the World Life Ins. Soc. v. Cook County, 322 Ill. App. 112; People ex rel. Anderson v. Baltimore & O.S.W. R. Co., 359 Ill. 301.)

A tax levy or assessment can be made only as expressly pointed out in the enabling statute (People ex rel. Shirk v. Glass, 9 Ill. 2d 302; People ex rel. Eitel v. Lindheimer, 371 Ill. 367); and a grant of power to levy taxes is strictly construed (People ex rel. Nelson v. Olympic Hotel Bldg. Corp., 405 Ill. 440). When the County Home Act is read against these general principles the inevitable conclusion must be that appropriations for County Home purposes contribute toward the maximum rate limit for the County General Fund. It does appear, however, that if the funds required to maintain the County Home would cause the maximum tax limitation to be exceeded it is within the power of the county board to raise additional funds by way of referendum as provided in Illinois Revised Statutes 1969, chapter 34, section 501. (See, People ex rel. Harrell v. B. & O. R.R. Co.,

411 Ill. 55.) I should also call your attention to the following language contained in Illinois Revised Statutes 1969, chapter 34, section 406, as amended, effective July 1, 1970:

"* * * Any tax levied for general assistance for needy persons in any county in addition to and in excess of the maximum levy permitted by this Section for general county purposes shall be paid into a special fund in the county treasury and used only for the purposes for which it is levied except that any excess in such fund over the amount needed for general assistance may be used for County Nursing Home purposes and shall not exceed .10% of the value, as equalized or assessed by the Department of Revenue. * * *"

In answer to your specific inquiries, I conclude that any taxes levied under the authority of chapter 34, section 5362 contribute toward the maximum rate limit on the County General Fund and that section 5362 does not contemplate an entirely separate tax levy for the erection or maintenance of a County Nursing Home. It is my further opinion that any funds required for the erection or maintenance of a County Nursing Home, which funds would be in excess of the maximum rate limit for the County General Fund, must be raised by referendum as authorized in

Honorable Bernard L. Oltman

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section 501 of chapter 34 (See, People ex rel. Nordstrom v. C., B. & Q. R.R. Co., 15 Ill. 2d 602).

Very truly yours,

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