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SPRINGFIELD

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FILE NO. S-1435

REVENUE:
Rate of Tax Levy for
County Health Fund

Honorable John W. Cox, Jr.
State's Attorney
Jo Daviess County Courthouse
Galena, Illinois 61036

Dear Mr. Cox:

I have your letter relating to the authority of a county to levy for the county health fund at a rate in excess of that established by referendum. According to information supplied in your letter, the electors of Jo Daviess County authorized the levy of an annual tax for community health facilities and services at a rate of .05 percent (then the statutorily allowed maximum rate). Subsequent to the referendum, sections 2 and 11 of "AN ACT in relation to the establishment and maintenance of county and multiple-county public health departments" (Ill. Rev. Stat. 1977, ch. 111 1/2, pars. 20c1, 20c10) were amended by Public Act 76-1419 to increase the statutory rate from .05 percent

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to .1 percent. After the statutory rate was raised, Jo Daviess County began levying at the higher rate without another referendum.

You inquire whether the county board of Jo Daviess County acted properly in increasing the levy from .05 percent to .1 percent without referendum. For the reasons hereinafter stated, it is my opinion that a tax rate set by referendum under section 2 of the Act in question may not be increased unless such increase is authorized by referendum.

Section 2 of the Act provides as follows:

"Whenever a petition signed by voters representing not less than 10% of the votes cast at the last preceding regular election of any county is presented to the county clerk requesting the establishment and maintenance of a county health department and the levy therefor, in excess of the statutory limit, of an additional annual tax of not to exceed .1% of the value, * * * of all taxable property of the county, the county clerk shall immediately notify the board of election commissioners, if any; the county clerk or board of election commissioners, or both, shall give notice that at the next regular election every elector may vote upon the proposition stated in the petition * * *. The ballot upon the proposition shall be in substantially the following form:

Shall county levy an annual tax of not to exceed .1% for the purpose of providing community health facilities and services?	YES	
	NO	

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If a majority of all votes cast upon the proposition is in favor thereof, the county board shall immediately proceed to establish a health department. The foregoing limitations upon tax rates, insofar as they are applicable to counties of less than 1,000,000 population, may be increased or decreased under the referendum provisions of the General Revenue Law of Illinois." (Emphasis added.)

Section 11 of the Act provides in pertinent part as follows:

"The county board of any county which has established and is maintaining a county or multiple-county health department shall, when authorized as provided in Sections 2, 3 or 4, levy annually therefor, in excess of the statutory limit, a tax of not to exceed .1% of the value, as equalized or assessed by the Department of Local Government Affairs, of all taxable property of the county, which tax shall be levied and collected in like manner as general county taxes and shall be paid (except as provided in Section 12) into the county treasury and held in the County Health Fund and shall be used only for the purposes of this Act. * * *" (Emphasis added.)

Section 2 is not a direct grant of power to levy a tax. Rather, it sets up procedures under which a tax in excess of the statutory limits established by section 25.05 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1977, ch. 34, par. 406) may be levied. The real grant of authority to levy the tax emanates from an affirmative vote of the electors in a referendum. It is clear that the maximum rate set in section 25.05 may be exceeded only after a favorable vote in a referendum. People ex rel. Nordstrom v. Chicago, Burlington and Quincy R.R. Co. (1959), 15 Ill. 2d 602, 604.

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The question submitted to the voters of Jo Daviess County with regard to the county health fund was substantially as follows:

"Shall Jo Daviess County levy an annual tax of not to exceed .05% for the purpose of providing community health facilities and services?"

Thus, the county board was granted the authority to levy only .05%, which was the statutory maximum at the time the referendum was held. The subsequent amendment of sections 2 and 11 did not effect a change in the original grant of authority, but only raised the maximum rate at which the levy may be set by referendum. Therefore, a new referendum is a necessary prerequisite to the increase of the levy above .05%.

In opinion No. S-1118, issued July 1, 1976, I advised that a new referendum would be necessary to raise the tax rate for a community mental health fund above the .1% rate previously set by referendum, even though the statutory maximum rate had been raised to .15%. I find the reasoning of that opinion applicable in the situation at hand.

Very truly yours,

A T T O R N E Y G E N E R A L