



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 16, 1973

File No. S-632

TAXATION:
Reduction of Tax Rate

Honorable William J. Cowlin
State's Attorney
McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Cowlin:

I have your letter wherein you state:

"I have been requested to seek your opinion concerning Illinois Revised Chapter 46, Section 1-3. (sic) The McHenry County Health Department wishes to present a referendum, wherein the ballot would not be in the form as set forth in the statute, but would be substantially, as follows:

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

As you can see, the difference between the two ballot forms is in the maximum request. I have informed the McHenry County Health Department

Honorable William J. Cowlin - 2.

that based on my experience in tax objection cases that such a referendum could be found to be invalid for tax objection purposes, and perhaps in its entirety."

Section 2 of "AN ACT in relation to the establishment and maintenance of county and multiple-county Public Health Departments", (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 20c1) provides for the levy of an annual tax of not to exceed .1% for the purpose of providing community health facilities and services, 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, as equalized or assessed by the Department of Local Government Affairs, 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 and the clerk or board of election commissioners shall give such notice in the next legal notice of a regular election in the county and provision shall be made by the county clerk or board of election commissioners for voting upon the proposition in accordance with the notice. 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	

In the first instance, the petition of the voters must reflect the tax rate that is to be voted upon at the referendum. Where a statute authorizes a county referendum to vote on a county tax of not to exceed a certain rate, the electors may petition and vote for a rate less than the statutory limitation. 1949 Op. Atty. Gen. 101.

The aforementioned statutory provision establishes a maximum tax rate of .1%. A maximum tax rate fixes the limit beyond which the taxing body may not levy. (Mathews v. City of Chicago, 342 Ill. 120.) Thus, a local tax levy must not exceed the limitation on the amount of tax authorized in the statute granting the power to tax. People ex rel. Hartman

Honorable William J. Cowlin - 4.

v. Terminal R. Ass'n. of St. Louis, 375 Ill. 186.

However, there appears to be no limitation as to decreasing the tax rate below the prescribed maximum. In fact, section 2 of "AN ACT in relation to the establishment and maintenance of county and multiple-county Public Health Departments", supra, permits a decrease in the established tax rate under the referendum provisions of the General Revenue Law of Illinois.

Obviously, if the voters petition for a tax rate of less than the prescribed maximum, the form of ballot that would be used in the referendum would differ from the ballot set forth in the authorizing statute. In regard to this, my predecessor in the above referenced Opinion stated:

"You will observe that the ballot should be substantially in the form prescribed. The statute does not require that it should be identical.

The Supreme Court of Illinois, in the case of People v. I. C. R. R. Co. 266 Ill. 240, in passing on the question of submitting the proposition of levying a tax for constructing township roads, held that the petition and ballot did not have to be identical with the statute and that the voters had the right to petition and vote on the particular kind of a road they desired. In this case the court said:

'* * * It is further objected that each of the two petitions for the building of hard roads in the

town of Oblong is defective for the reason that each petitions for an election upon the question, 'For the purpose of constructing and maintaining crushed rock roads in said town,' whereas the statute prescribes that the petition shall be, 'For the purpose of constructing and maintaining gravel, rock, macadam or other hard roads.' The petitioners have the right to determine the kind of road on which they will ask for the vote of the town. If they see fit, they may petition for a vote upon levying a tax for gravel, rock, macadam or other hard roads in the language of the statute, thus leaving the character of the road to be determined by the highway commissioners. On the other hand, they may petition for a vote upon a particular kind of hard road, in which event the vote must be had upon that proposition and cannot be extended to other kinds of roads. People v. Kankakee and Seneca Railroad Co., 248 Ill. 114. * * * "

1949 Op. Atty. Gen. 101

Therefore, it is my opinion that the petition of the voters may reflect a tax rate less than the prescribed maximum and the electors of McHenry County can accordingly vote on a ballot reflecting the reduced tax rate.

Very truly yours,

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