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FILE NO. 92-002

SPECIAL DISTRICTS:
Tax Rate in Fire
Protection Districts

Honorable William R. Pearcy
State's Attorney, Washington County
Washington County Courthouse
Nashville, Illinois 62263

Dear Mr. Pearcy:

I have your letter wherein you inquire whether an ordinance adopted by a fire protection district board of trustees in accordance with section 14 of the Fire Protection District Act (Ill. Rev. Stat. 1990 Supp., ch. 127 1/2, par. 34), which provides for the levy of taxes at a rate in excess of .125% but not in excess of .30%, remains in effect until subsequent action of the board of trustees, or is limited to the year for which the taxes are levied. For the reasons hereinafter stated, it is my opinion that once adopted, the rate limitation of .30% will remain in effect until subsequent

action of the board of trustees, although a new levy ordinance must be adopted annually.

Section 14 of the Fire Protection District Act authorizes the board of trustees of each district to levy taxes for general corporate purposes. The first paragraph of that section permits levies for various purposes, the aggregate amount of which may not exceed .125% of the equalized assessed value of property in the district. The second paragraph provides:

"All taxes proposed to be levied by a district shall be levied by ordinance, a certified copy of which shall be filed with the county clerk of the county in which the taxes are to be collected not later than the third Tuesday in December in each year."

The fifth, sixth and seventh paragraphs of section 14 provide:

"The Board of Trustees have power to levy such taxes at a rate in excess of .125% but not in excess of .30% of the value of all taxable property within the district, as equalized or assessed by the Department of Revenue, under the following terms and conditions.

The board of trustees shall proceed in like manner prior to the adoption of an ordinance providing for the levy of taxes at a rate not in excess of .30% as if the board of trustees had followed the procedures to adopt an ordinance not in excess of .125% of the value of all taxable property within the district as equalized or assessed by the Department of Revenue.

The board of trustees shall provide by ordinance for the levy and collection of taxes at a rate not in excess of .30% of the value of all taxable property within the district as equalized or assessed by the Department of Revenue. A

certified copy of such ordinance shall be filed in the office of the county clerk of each county in which any portion of the territory of such fire protection district is situated, which certified copy constitutes authority for the clerk or clerks in each case to extend taxes annually at the rate so provided against all of the taxable property contained in the fire protection district."

The eighth through eleventh paragraphs of section 14 provide for the publication of the ordinance authorized in the preceding paragraph, and also provide for a referendum to be held to submit the ordinance to popular approval upon the filing of a petition signed by 5% of the voters in the district.

In construing a statute, the intention of the General Assembly will control, and the various provisions of the statute should be construed together in light of the general purpose and object of the Act, so as to give effect to the intent and purpose of the General Assembly in enacting it. (People ex rel. Nelson v. Olympic Hotel Bldg. Corp. (1950), 405 Ill. 435, 444.) Statutes must be reasonably construed, so as to be applied in a practical and common sense manner. People v. Illinois Central R.R. Co. (1940), 373 Ill. 523, 526.

Section 14 authorizes the board of trustees of a fire protection district to levy taxes, by ordinance, at a rate of up to .125% without voter approval. The board is also authorized to levy at a rate of up to .30%, subject to a backdoor referendum, and up to .40% upon the approval of a referendum submitted by the board. The second paragraph of section 14

requires that all taxes levied by a district be levied by ordinance, and requires that a copy be filed with the county clerks of affected counties by a specified date each year. These paragraphs of section 14 must be read together and construed in light of the overall purpose of the Act.

While the language of the sixth and seventh paragraphs of section 14 is not entirely clear, it is my opinion that the seventh paragraph provides for the adoption of a rate ordinance separate from the annual levy ordinance. The annual levy ordinance, based upon the district's budget, specifies the dollar amount of taxes to be collected. The ordinance provided for in the seventh paragraph, however, establishes the maximum rate at which taxes may be levied and collected. The last sentence of that paragraph provides that, upon the filing of the rate ordinance, the county clerk has authority "in each case to extend taxes annually at the rate so provided * * *". Thus, the statute contemplates that the ordinance providing for levies at an increased rate will be a different enactment from the annual levy ordinance, and that the rate ordinance will be valid in succeeding years. When an ordinance authorizing the levy of taxes at a rate in excess of .125% but not in excess of .30% has been adopted and filed, and publication of that fact has been made in accordance with section 14, it may be challenged by institution of a backdoor referendum. If no referendum is initiated, the ordinance becomes effective forthwith.

To conclude otherwise would permit each annual tax levy made at a rate in excess of .125% but not more than .30% to be challenged by a backdoor referendum. This possibility would seriously compromise the fiscal planning ability of a district, as well as potentially entailing significant election costs on an annual basis. Although it is clear that the General Assembly intended to provide residents of a district with a measure of control over applicable tax rates, subjecting a district to an annual referendum on those rates would not only be impractical, but absurd. Section 14 must be construed to avoid such an interpretation. People v. Illinois Central R.R. Co. (1940), 373 Ill. 523, 526.

Therefore, because the ordinance providing for a tax levy at a rate not in excess of .30% is separate from the annual levy ordinance, the rate ordinance need not be adopted annually. Once the rate ordinance has been adopted and the period in which a backdoor referendum may be initiated has passed, a certified copy of the ordinance may be filed with the appropriate county clerk or clerks. Thereafter, each clerk of a county in which territory of the district is located is authorized to extend and collect the annual levy in an amount up to the specified rate.

Respectfully yours,



ROLAND W. BURRIS
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