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STATE OF NEBRASKA
OFFICIAL
APR 23 1992
DEPT. OF JUSTICE

DATE: April 20, 1992

SUBJECT: Application of county tax levy limits to tax levies for county ambulance service.

REQUESTED BY: Avery L. Gurnsey
Rock County Attorney

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you indicate that Rock County is considering the possibility of resuming full responsibility for ambulance service in the county, including the possible purchase of an ambulance. You state that Neb.Rev.Stat. § 23-378 allows the county board to pay for the cost of county ambulance service out of available general funds, or by levying a tax to do so. You also note that the statute authorizing the ambulance tax levy provides that the ambulance levy "shall be in addition to restrictions on the levy of taxes provided by statute." You ask whether this quoted language is sufficient to remove a county ambulance tax levy from the statutory levy limits for counties. You also ask whether this quoted language would remove a county ambulance tax levy "from the fifty cent levy limitation."

Section 23-378 has been transferred to Neb.Rev.Stat. § 13-303 (Reissue 1991). That section generally states that county boards may provide ambulance service as a governmental service, and that:

> Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds, or may levy a tax for the purpose of providing necessary ambulance service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute...

(emphasis supplied).

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There are statutory limits on the amount of taxes counties can levy for ordinary revenue purposes. Neb.Rev.Stat. § 77-1603 (Reissue 1990) provides, in pertinent part:

> The rate of tax shall not exceed (1) for ordinary county revenue in counties having a population of more than nine thousand inhabitants, not more than thirty-five cents on each one hundred dollars upon the actual value of all the taxable property in such county, except intangible property, and in counties having a population of nine thousand or less, not more than forty-two cents on each one hundred dollars upon the actual value of all the taxable property in such county, except intangible property;

We assume that your initial question is in reference to this statute.

In the absence of anything indicating to the contrary, statutory language is to be given its plain and ordinary meaning. State v. Rios, 237 Neb. 232, 465 N.W.2d 611 (1991). With this rule in mind, it seems to us that the plain and ordinary meaning of the language in Section 13-303 cited above is that a tax levy for county ambulance service should not be included in the levies which are subject to limitation under Section 77-1603. This is particularly true since the predecessor statutes to Section 13-303 were passed after the initial version of Section 77-1603, and presumably, the Legislature had the latter section in mind when it created the language in Section 13-303 in question. Therefore, we believe that the portion of Section 13-303 at issue does remove the tax levies contemplated by that statute from the statutory levy limits contained in Section 77-1603.

You also ask whether Section 13-303 removes the tax levy for ambulance service from "...the fifty cent lid levy limitation." We assume your reference to the fifty cent lid levy limitation is to Article VIII, Section 5 of the Nebraska Constitution. We do not believe that Section 13-303 is effective to vitiate the provisions of that portion of our state constitution.

Initially, we would note that Section 13-303 does not purport to affect any pertinent constitutional provisions; that statute dealing with county tax levies for ambulance service simply removes those levies from the effect of statutory levy limitations for counties. Nevertheless, we believe that it is clear that Section 13-303 could not render Article VIII, Section 5 ineffective.

Article VIII, Section 5 of the Nebraska Constitution provides that:

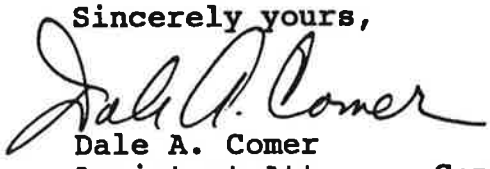
> County authorities shall never assess taxes the aggregate of which shall exceed fifty cents per one hundred dollars actual valuation as determined by the assessment rolls, except for the payment of indebtedness existing at the adoption hereof, unless authorized by a vote of the people of the county.

This provision, in its current form, dates from 1920. However, there has been a provision in our state constitution limiting taxation by counties since at least 1875. See Nebraska Constitution of 1875, Article IX, Section 5.

Article VIII, Section 5 of the Nebraska Constitution (and the similar provisions which preceded it) is not a grant of taxing power, but rather a limitation on the authority of the Legislature and the counties to tax. Grand Island & W.C.R. Co. v. Dawes County, 62 Neb. 44, 86 N.W. 934 (1901); Report of the Attorney General, 1975-1976, No. 265 at 388. As a result, the Legislature cannot authorize counties to levy taxes in excess of the constitutional maximum set by Article VIII, Section 5. Dwyer v. Omaha-Douglas County Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972). County taxes exceeding the constitutional limit, absent a vote of the people, are illegal and void. Chicago, B. &. Q. R. Co. v. County of Nemaha, 50 Neb. 393, 69 N.W. 958 (1897).

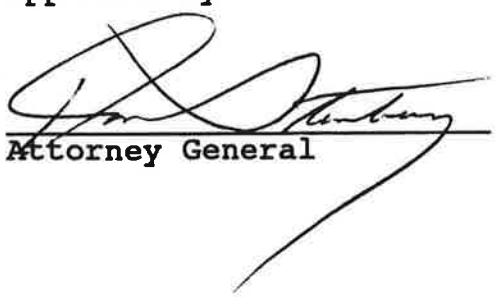
Since the Legislature cannot authorize counties to levy taxes in excess of the constitutional maximum set by Article VIII, Section 5, it seems to us that any statutory attempt to negate the effect of that constitutional provision by simply providing that certain county taxes are not to be considered as a part of the total county levy would necessarily be ineffective. A grant of power by the Legislature which is contrary to the constitution is unconstitutional and void. State ex rel. Bottcher v. Bartling, 149 Neb. 491, 31 N.W.2d 422 (1948). Therefore, we do not believe that the language at issue in Section 13-303 removes a proposed tax levy for ambulance purposes from the effect of Article VIII, Section 5.

Sincerely yours,



Dale A. Comer
Assistant Attorney General

Approved by:



Attorney General