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SPRINGFIELD

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FILE NO. S-1118

REVENUE:

**Tax Levy for Community
Mental Health Fund**

Honorable Howard L. Hood
State's Attorney
Jackson County
Murphysboro, Illinois 62966

Dear Mr. Hood:

I have your letter wherein you ask whether the Jackson County Board may levy an annual tax of .15% for the Community Mental Health Fund of Jackson County without first obtaining the approval of the voters in Jackson County. In accordance with the Community Mental Health Act, a referendum was passed in 1964 in Jackson County which established a tax levy of .1% for the Community Mental Health Fund. At that time, the Act provided that a tax not to exceed .1%

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could be levied for the Fund if the tax was authorized by referendum. Ill. Rev. Stat. 1963, ch. 91 1/2, pars. 304 and 305.

Public Act 79-969, which amended the Community Mental Health Act, raised the maximum tax levy for the Community Mental Health Fund to .15%. However, this maximum can be imposed only after it has been authorized by referendum.

Section 4 of the Community Mental Health Act (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 304) now permits the county board to levy a tax not to exceed .15% but subjects the levy to the provisions of section 5 of the Act. Section 4 reads in pertinent part:

"§ 4. In order to provide the necessary funds or to supplement existing funds for such community mental health facilities and services, * * * the governing body of any governmental unit, subject to the provisions of Section 5 may levy an annual tax of not to exceed .15% upon all of the taxable property in such governmental unit at the value thereof, as equalized or assessed by the Department of Local Government Affairs. * * * " (emphasis added.)

Section 5 of the Act (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 304) provides that the county board can levy a

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tax of .15% only after the voters of the county have approved the levy. Section 5 reads in pertinent part:

"§ 5. When the governing body of a governmental unit passes a resolution as provided in Section 4 asking that an annual tax may be levied for the purpose of providing such mental health facilities and services, * * * in the community and so instructs the clerk of the governmental unit such clerk shall, in the next legal notice of a regular general election in the governmental unit or at least 20 days before a special election called for the purpose by the governing body of the governmental unit give notice that at such election every elector may vote for or against the levy of a tax for the purpose of providing community mental health facilities and services and shall make provision for voting upon the proposition at such election. The ballot to be used for the submission of the proposition at such election shall be in the following form:

| | | |
|---|-----|--|
| Shall (governmental unit) levy an annual tax of not to exceed .15% for the purpose of pro- viding community mental health facilities and services? | YES | |
| | NO | |

If a majority of all the votes cast upon the proposition are for the levy of such tax, the governmental body of such governmental unit shall thereafter annually levy a tax not to exceed the rate set forth in Section 4. * * * (emphasis added.)

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The county board's power to levy a tax of .15% for the Community Mental Health Fund is thus conditioned upon the approval of the voters in the county. When the authority of the county to tax at a certain rate emanates from a favorable vote on a referendum, the county board may not levy a tax at that rate without first obtaining the approval of the voters in the county. (People ex rel. Nordstrum v. Chicago, B. & Q.R. Co., 15 Ill. 2d 602.) The voters of Jackson County have approved the levy of a tax of .1%; they have not approved of a tax in excess of .1%. Since the voters have not yet authorized a tax of .15%, the Jackson County Board may not levy a tax at that rate for the Community Mental Health Fund.

Very truly yours,

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