



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

July 9, 1976

FILE NO. S-1121

REVENUE:
Applicability of Rate
Limitation On County
Taxing Power to Tax For
County Police Protection

Honorable Dallas C. Ingemunson
State's Attorney
Kendall County
Kendall County Courthouse
Yorkville, Illinois 60560

Dear Mr. Ingemunson:

This responds to your letter requesting my opinion as to whether a tax levied pursuant to section 25.05-1c of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 409.01) is subject to the rate limitation contained in section 25.05 of that Act. (Ill. Rev. Stat. 1975, ch. 34, par. 406.) As you note in your letter, section 25.05 is the general provision authorizing counties to tax for county purposes and imposing a limitation on the rate at

Honorable Dallas C. Ingemunson - 2.

which such taxes may be levied. You note further that section 25.05-1c is not among those taxing provisions expressly excepted from the rate limitation by the language of section 25.05 itself. Despite this fact, however, it is my opinion that the legislative intent plainly expressed in section 25.05-1c is that the tax provided for there should not be subject to the limitations of section 25.05.

The relevant portion of section 25.05-1c provides that:

"In counties of less than 3,000,000 inhabitants, to levy and collect, annually, a tax of not to exceed .15% of the value, as equalized or assessed by the Department of Local Government Affairs, of all taxable property in the county, to provide revenue for the purpose of affording police protection by the sheriff's department of that county, but such a county may levy not to exceed .10% the first year it levies for such purposes and not to exceed an additional .05% in a succeeding year. Such tax shall not be included within any statutory limitation of rate or amount for other county purposes, but shall be excluded therefrom and be in addition thereto and in excess thereof.

* * *

(emphasis added.)

The plain meaning of the underlined portion of the language quoted seems clearly to be that the tax for police protection is to be excluded from statutory rate limitations such as that

Honorable Dallas C. Ingemunson - 3.

contained in section 25.05.

You refer in your letter to a Supreme Court case which suggests that the tax imposed pursuant to section 25.05-1c should be included within the rate limitation provided in section 25.05. The rule of that case is well stated in People ex rel. Ramey v. Gulf, Mobile & Ohio R. Co., 15 Ill. 2d 126. Referring to section 25.05, the court at page 129 held that the limitation provided there:

* * * * [I]s applicable except when the tax involved is clearly and expressly excluded from the limit or when the limitation is removed by reason of a referendum in accordance with the procedure set forth in section 27 of the Counties Act. * * * *

The taxing statute involved in the Ramey case was section 26a of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 433) which provides that the plat and survey tax "shall be in addition to the maximum of taxes authorized by law for county purposes". Citing the familiar maxim that taxing statutes are to be strictly construed against the government, the court concluded that the language of section 26a was not sufficient to remove the plat and survey tax from the rate limitation of section 25.05. The mere grant of

Honorable Dallas C. Ingemunson - 4.

authority for an additional tax was held not to be an addition to the statutory rate limitation.

The language of section 25.05-1c, on the other hand, undeniably does more than simply authorize an additional tax. It also "clearly and expressly" excludes the county police protection tax from "any statutory limitation of rate or amount". When a statute not only grants authority to levy an additional tax, but also excludes that tax from any statutory rate limitation, the Supreme Court has held that a tax levied pursuant to such a statute may be in excess of maximum statutory rates. Central Illinois Pub. Service Co. v. Thompson, 1 Ill. 2d 468; People ex rel. Dooley v. New York, Chicago & St. Louis R. Co., 368 Ill. 536; and People ex rel. Bracher v. Millard, 307 Ill. 556.

It is therefore my opinion that a tax levied pursuant to section 25.05-1c of "AN ACT to revise the law in relation to counties" is not to be included within the rate limitation set forth in section 25.05 of that Act.

Very truly yours,

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