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TAXATION: Equalization.

CONSTITUTIONAL LAW: Tax Uniformity.

The constitutional rule of tax uniformity requires a levy of ad valorem taxes using a uniform standard of equalized value as determined upon appeal. The legislature may not permit waiver of this requirement.

Opinion No. 4812 August 1, 1975.

Honorable Gary M. Owen
House of Representatives
State Capitol
Lansing, Michigan

You have requested my construction of the provisions of 1893 PA 206, § 39a; MCLA 211.39a; MSA 7.80(1), which was added to the general property tax act by 1972 PA 296 and subsequently amended by 1974 PA 384. This provision authorizes the levy of ad valorem taxes during the pendency of appeals before the tax commission or the tax tribunal. In its entirety, § 39a reads:

> "(1) If the determination of the equalized value is delayed as a result of an appeal taken pursuant to this act and pending before the tax commission or the tax tribunal, the assessing officer shall levy taxes upon the equalized value of property as determined by the county board of commissioners which is being reviewed by the tax commission or tax tribunal. The payment of taxes thusly levied, hereinafter called the 'tentative levy', shall not constitute a final and ultimate discharge of the taxpayer's obligation except as provided in subsection (3).
>
> "(2) After the final determination of equalized value by the state tax commission or tax tribunal, the assessing officer shall determine the difference in tax, if any, between the tentative levy and a levy made upon the equalized value as finally determined by the tax commission or tax tribunal, which levy is hereinafter referred to as the 'final levy'.
>
> "(3) If such determination shows that additional taxes are due, the county board of commissioners may spread the additional levy upon the next succeeding annual tax roll and collect them together with the next succeeding annual taxes upon the property or declare the tentative levy the final levy.
>
> "(4) If the tax liability is decreased as a result of the tax commission's or tax tribunal's final determination of equalized value, the taxes collected pursuant to the tentative levy in excess of the tax liability pursuant to the final levy shall be credited against the taxes upon the property for the next succeeding year, together with a proportionate share of any collection fee applicable to the difference.
>
> "(5) Additional taxes collected or credits against tax liability made pursuant to the provisions of this section shall inure to the benefit or detriment of the taxing units in the respective proportions in which they share the proceeds of the final levy.

"(6) The state tax commission shall render such technical assistance as is necessary to implement the provisions of this act."

The question you have asked me to address, therefore, is whether a local unit of government, township, school district or county must levy the additional taxes provided for in 1893 PA 206, § 39a(2) and (3), *supra,* in the event that their budget requirements are met by the "tentative levy" referred to in § 39a(1).

The headnote to 2 OAG, 1957-1958, No. 3284, p 287 (November 3, 1958), reads:

"If appeals to the state tax commission from either county equalization of tax assessments or from county allocation of rates are pending at the time a tax is normally due from a taxing unit, a valid property tax levy cannot be made by such taxing unit until such appeals are finally determined."

The holding of this opinion was cited with approval in *Bd of Education of Alpena Public Schools* v *Presque Isle Twp Bd,* 24 Mich App 48, 55; 179 NW 2d 691, 695 (1970). The Court quoted the following portion of the Attorney General's Opinion:

" 'It is therefore my opinion that if appeal is timely taken, either from county equalization or from the final orders of the county allocation board, to the state tax commission, a taxing unit must delay the levy of its taxes until such appeals are finally determined.' "

The Court then stated:

"The plaintiff in an effort to obtain its funds early sent its final tax bills with those of the City of Alpena in July, 1966. Had they waited until the county and township taxes were sent out in December, plaintiff would have known the final valuation of Presque Isle Township and could have made the necessary adjustments. For those who are involved in situations such as this in the future we urge that they follow this advice as given to them by the attorney general."

1893 PA 206, § 39a, *supra,* was intended to enable local units of government to obtain revenue from ad valorem taxes at their normal due date, despite the pendency of a county equalization appeal. Any necessary adjustments to the tax levy are to occur on the next succeeding annual tax roll subsequent to the final determination of the county equalization appeal.

The question you have propounded must be answered by reference to those considerations taken into account by the Michigan Court of Appeals in the *Presque Isle* case, *supra,* the most important of which was the impact of the uniformity provisions of Const 1963, art 9, § 3. In that case, the Alpena Public Schools had levied 23.71 mills throughout the school district territory except in its Presque Isle Township portion. In the latter, there was levied only a school tax of 14.94 mills based on the final order of the Presque Isle County Allocation Board. The Court concluded [p 58]:

"In following the mandate to obtain uniformity in taxation it is necessary to levy a millage of 23.71 mills on Presque Isle Township,

that being the same millage levied upon all other segments of the plaintiff school district. To do otherwise would result in a nonuniformity of taxation which is violative of the Constitution and the settled law of this state. * * *"

Therefore, to obtain uniformity of taxation, a final levy of taxes using a uniform standard is necessary. If such final levy results in revenues which exceed the budgetary needs of the local units entitled thereto, those local units are at liberty to reduce their tax rates applicable to the next succeeding annual levy of taxes.

It would be well to quote from the Court of Appeals in *Presque Isle, supra,* in this regard:

"Mandamus is the appropriate remedy, *School District No. 9, Pittsfield Township, Washtenaw County* v. *Washtenaw County Board of Supervisors, supra,* and accordingly a writ of mandamus should issue ordering the balance of $87,560 to be spread upon the next tax roll of Presque Isle Township and returned to the plaintiff school district. *This amount will be credited to the school district as an amount on hand and will be deducted from its next budget and, therefore, will reduce uniformly the amount to be levied upon all taxpayers in the school district for the subsequent year.*" [Emphasis supplied] p 59 of Opinion

Based on the foregoing considerations, it is my conclusion that the final levy of ad valorem taxes is mandatory and the term "may," used in 1893 PA 206, § 39a(3), *supra,* must, in view of the controlling constitutional uniformity provision, be interpreted and applied as meaning "shall."

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Attorney General.

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MICHIGAN STATE POLICE: Pursuant to 1935 PA 59, § 6; MCLA 28.6; MSA 4.436, Michigan State Police have authority to enforce local ordinances.

Opinion No. 4878 August 13, 1975.

Col. George L. Halverson, Director
Department of State Police
714 S. Harrison Road
East Lansing, Michigan 48823

This letter is in response to your request for an opinion on the following two questions:

1. Do officers of the Michigan Department of State Police have authority to enforce ordinances enacted by municipal, county, and township boards of supervisors?