Counties—Limit of Indebtedness, How Determined—Property, Full Cash Value.

The full cash value at which property is assessed is to be the basis for determining the limit of indebtedness of a county.

July 8th, 1919.

Mr. Albert Anderson,
County Attorney,
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Dear Sir:

I have your letter of recent date with reference to the question as to whether the basis for determining the amount of indebtedness which a county may incur is the actual value of the property as listed for taxation, or the percentages which will be used as the basis for imposing the taxes.

The classification law, Chapter 51, Session Laws of 1919, divides property into seven classes and provides that the basis for the imposition of taxes upon the different classes shall be a certain percentage of the true and full value of the property of each class, the percentage for each class being specified. This act does not attempt to amend or repeal Section 2501, Revised Codes 1907, which requires that all property shall be assessed at its full cash value, but simply provides that the basis for the imposition of taxes shall be the percentages set out in the act. Consequently the assessor in listing property for taxation lists at its ful cash value, having nothing whatever to do with the percentages specified in the act. When the tax lists are turned over to the county clerk by the assessor they will contain nothing but the names of the owners, the description of the property and the full cash value thereof, and the county clerk in computing and entering the taxes will make his computations on the percentages given in the act.

Section 5 of Article 12 of the Constitution contains the following provision limiting the amount of indebtedness which a county may incur:

> "No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the (value of the) taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness."

Section 6 of the same article contains a similar provision limiting the amount of indebtedness which a city, town, township or school district may incur, the only difference being that the limit is fixed at 3 per centum instead of 5 per centum.

The whole question depends on the meaning to be given the words "value of the taxable property." If these words mean the actual value of the property, regardless of the value at which it is assessed for taxation, then such actual value is the basis for determining the amount of indebtedness which does not, in the aggregate, exceed five per centum of such actual value, while a city, town, township or school district may incur an

indebtedness which does not, in the aggregate, exceed three per centum of such actual value. If, however, these words mean the value at which the property is assessed for taxation, then the basis is such assessed value. Here, however, the question arises as to what is the assessed valuation, whether it is the actual value entered on the tax lists, or whether it is the percentag used as the basis for imposing the taxes.

In Illinois the constitutional provision, Sec. 12, Art. 9, is almost identical with those contained in Sections 5 and 6 of Art. 12 of our Constitution. An Illinois statute required that on the tax lists the full cash value of property should be entered in one column, which should be headed full cash value, while one-fifth of such value should be entered in another column which should be headed, assessed value, and that taxes should be imposed on such one-fifth of full cash value or on the assessed value. In the case of Fishburn vs. City of Chicago, 59 N. E. 791, the Supreme Court of Illinois held that the words "value of the taxable property" in the constitutional provision above referred to mean the assessed value and consequently the basis for determining the limitation was not the full cash value but the assessed value, or one-fifth of the full cash value.

In Iowa also the constitutional provision, Sec. 3, Art. 11, is almost identical with those contained in Sections 5 and 6 of our Constitution. Also in Iowa there was a statute almost identical with the Illinois statute, the only difference being that the percentage to be entered on the tax lists as the assesed value and on which taxes were to be imposed, was fixed at 25% of the full cash value instead of one-fifth of such value. In the case of N. W. Hasley & Co. vs. City of Belle Plaine, 104 N. W. 494, the supreme court of Iowa held that the words "value of the taxable property" in the constitutional provision meant the full cash value of the property and not the percentage of such value taken as the assessed value and on which taxes were imposed, this decision being directly opposed to the decision of the supreme court of Illinois in the case of Fishburn vs. City of Chicago, supra.

In Washington also the constitutional provision, Section 6, Article 8, is almost identical with those contained in Sections 5 and 6 of Article 12 of our Constitution. A Washington statute required that all property should be assessed for taxation at not to exceed fifty per centum of its actual value. It will be noticed that this statute differed materially from the Illinois and Iowa statutes, in that it did not require the full value of the property to be entered on the tax lists and the percentage on which taxes were imposed to be also entered on said lists, but simply required that property should not be assessed for taxation exceeding fifty per centum of its actual value, so that the only valuation appearing on the tax lists was the valuation at which the property was assessed. In the case of Hansen vs. City of Hoquiam, 163 Pac. 391, the supreme court of Washington held that the words "value of the taxable property" in the constitutional provision meant the actual value of the property and not the value at which the property was assessed, following the supreme court of Iowa in the case of N. W. Hasley & Co. vs. City of Belle Plaine, supra, the court referring to both that case and the case of Fishburn vs. City of Chicago, supra, and refusing to follow the latter.

In the light of these three decisions it is somewhat difficult to tell just what position our supreme court would take on this question, but I am, however, of the opinion, that in view of the fact that Chapter 51, Session Laws 1919, does not amend or repeal Section 2501, Revised Codes, so that the only valuation which will appear on the tax lists will be the full cash value, our court would not only follow the supreme courts of Iowa and Washington but would perhaps hold that the full cash values entered on the tax lists are the assessed values, and that consequently the basis for determining the limit of indebtedness in the full cash values at which the property is assessed.

In this connection, however, I desire to call your attention to the following: Subdivision 7 of Chapter 48, Session Laws 1919, requires the State Board of Equalization, for the purpose of equalizing and adjusting the valuations of taxable property, to meet on the fourth Monday in July, which this year will be July 28th, and to remain in session until the third Monday of August, which this year will be August 25th, and later if necessary. The State Board of Equalization is required to assess all railroad, telephone, telegraph, electric power and transmission lines, and similar properties operated in more than one county, and to transmit to the county clerk such assessments, together with such changes as the state board may have made in other assessments, and the board of county commissioners is required to meet on the second Monday in September and enter in the proper record book an order distributing to the proper school districts, cities and towns, the assessments made by the state board, and it then becomes the duty of the county clerk to enter such assessments, and all changes made by the state board, in the tax lists. After entering such assessments and making such changes in the tax lists the county clerk then computes and enters the taxes, and it is not until after all of this has been done that the assessment list or roll is completed, and until such assessment list or roll for the year 1919 is completed the assessment for 1919 mut be used as the basis for determining the amount of indebtedness which a county, city, town, or school district may incur. Here again arises another question. Unquestionably property was not assessed at anything like its actual value for the year 1918, perhaps not to exceed thirty-five or forty per cent of such value. If the supreme court should hold that the actual value of the property is to be used as the basis for determining the limit of indebtedness, then it may be possible that in the case of a bond issue it might be shown in a proper action just what the value of the property in a particular county or school district was in 1918, and this value as so shown would be the basis for determining whether or not the limit of indebtedness is being exceeded, while on the other hand should the court hold that the value at which the property was assessed for taxation during the year 1918 is the basis for determining the limit of indebtedness many of the bond issues to be submitted at the election on September 2nd will exceed such limit of indebtedness.

In the case of Hilger vs. Moore, County Treasurer, involving the constitutionality of Chapter 51, Session Laws 1919, a motion for a rehearing has been made, in which this particular question has been presented to the court. Should the court, in passing on this motion, take up and consider

this question, its decision may be decisive of such question. However, should the court not do so, it is very probable that an action will be instituted for the express purpose of having this question decided.

I do not, however, see any reason why any proceedings which have been instituted for the purpose of submitting to the electors the question of incurring an indebtedness should be abandoned, even though such indebtedness, if authorized, will exceed the constitutional limit if the percentages of value be taken as the basis, but believe that such proceedings should be carried through, and if the indebtedness be authorized the question may then, in an appropriate proceeding be determined.

Respectfully,

S. C. FORD,

Attorney General.