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KYSC1976-SC-0086-04

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MISC SUPPLEMENT

560 SW 2d 10

SUPREME COURT OF KENTUCKY
FILE NO. 76-86

WILLIAM C. JACOBS

APPELLANT

VS:

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT and ED HAHN, COUNTY
SHERIFF

APPELLEES

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ARMAND ANGELUCCI, JUDGE

SUPPLEMENT TO BRIEF FOR APPELLEES

During rebuttal oral argument of this case, Appellant for the first time contended that the graduation in the level of taxes of the Lexington-Fayette Urban County Government was invalid because unrelated to "differences between non-revenue-producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district," as required by Constitution §172A. This contention was not in briefs and not in argument in chief.

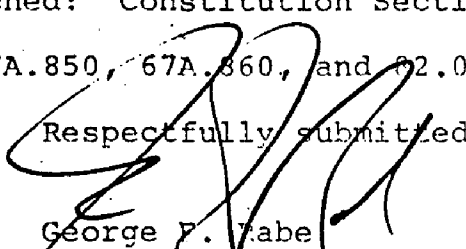
This matter of services is not contained in the tax levy ordinance in the record for the simple reason that the differences in services of the government are reflected in §§ 2.05 and 2.06 of the Charter which are contained in the record as part of Stipulated Exhibit 1. The services in the district where city-type taxes are imposed are: "sanitary sewers, street lighting, street cleaning, garbage and refuse collection, and such additional fire and police protection as might be required." Sections 2.01, 2.02, 2.05, 2.06 and 8.06 of the Charter relating to taxes, districts, and services are attached for convenient reference.

Appellant also contended at oral argument that the government stipulate that the Full Urban Services District and General

Services District are tax districts within the meaning of the Constitution of Kentucky. The only stipulation entered into by the parties was that these are taxing districts under the Charter of the Lexington-Fayette Urban County Government, the comprehensive plan pursuant to which the government was established (Transcript of Record, pages 36, 37). The question of taxing districts under the Constitution of Kentucky is, of course, to be determined by construction of that document in light of the facts of the case, and no attempt was made, or as the Court indicated during oral argument, could be made to stipulate constitutional terms which must be construed by the Court.

During oral argument question was also raised by the Court as to convenient reference to respective constitutional provisions and statutes. Therefore, copies of the following constitutional and statutory provisions are attached: Constitution Sections 157, 171 and 172A; KRS 67A.150, 67A.850, 67A.860, and 62.085.

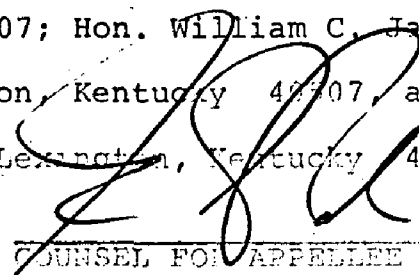
Respectfully submitted,


George P. Tabe
Commissioner of Law
Lexington-Fayette Urban County
Government
136 Walnut Street
Lexington, Kentucky 40507
Phone: (606 233-1211)

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

Copies of the foregoing Supplement were hand delivered this 19th day of October, 1977, to Hon. Armand Angelucci, Judge, Civil Branch, Third Division, Fayette Circuit Court, Fayette County Courthouse, Lexington, Kentucky 40507; Hon. William C. Jacobs, 602 Security Trust Building, Lexington, Kentucky 40507, and Hon. Jerry Anderson, 111 Cheapside, Lexington, Kentucky 40507.


COUNSEL FOR APPELLEE

Section 2.01 Services Districts and Their Areas.

For the general purposes of providing that all property owners in the territory of the Merged Government shall pay an ad valorem tax rate reasonably based upon the services provided by said government; and to further provide that no such property owner shall, insofar as reasonably possible, pay for additional non-revenue-producing services and benefits until such time as the services and benefits are being provided to him by the Merged Government; the territory of the Merged Government shall be divided into a General Services District, a Full Urban Services District, and such Partial Urban Services Districts as the Council of the Merged Government shall from time to time create or establish. Except as otherwise provided in Section 2.02 of this Charter, the ad valorem tax rate in any services district shall be the same for all property owners. The General Services District shall consist of the total area of the Merged Government as defined in Section 1.02 of this Charter. The Full Urban Services District shall initially consist of the total area embraced by the corporate boundaries of the City of Lexington, as fixed and established upon the date this Charter is put into effect. Partial Urban Services Districts shall consist of any area outside the Full Urban Services District designated by the Council under the conditions and limitations governing such districts set forth in this Charter.

Section 2.02 Services Districts and Taxing Districts.

For purposes of levying and collecting ad valorem taxes on property, each of the services districts described in this Charter shall constitute a separate tax district within which the Merged Government shall levy and collect taxes in accordance with the kind, type, level, and character of the services provided by the Merged Government in each of the services districts. The initial rate of ad valorem taxation on property located within the General Services District shall be the same as that imposed by the County of Fayette on the date this Charter is put into effect. Except as otherwise provided in this Section, the initial rate of ad valorem taxation on property located within the Full Urban Services District shall be the same as that imposed on property located within the City of Lexington by the County of Fayette and the City of Lexington on the date this Charter is put into effect. The rate of ad valorem taxation on property located within any Partial Urban Services District created or established by the Merged Government Council shall be governed by the conditions and limitations imposed in Section 2.04 of this Charter.

In the event that any area or property located within the initial Full Urban Services District is not provided with one or more of the additional services covered under Section 2.06 of this Charter, the Council of the Merged Government shall reduce the rate of ad valorem taxation to a level commensurate with the kind, level, and type or character of services provided.

Section 2.05 Functions of the General Services District.

Throughout the General Services District, the Lexington-Fayette Urban County Government shall furnish, provide and maintain all services rendered by the County of Fayette and the City of Lexington on the effective date of this Charter, except those additional services specified for the Full Urban Services District or those additional services provided in such Partial Urban Services Districts as the Council may from time to time establish. Among those services and activities to be furnished, provided, and maintained within the General Services District shall be: general administration, fire and police protection, courts, jails and other detention facilities, probation officers, child care, health and welfare services, parks and recreation, airports and such other public transportation as may be established, civil defense, planning and zoning, streets and highways, traffic engineering and control, public libraries, public housing, urban development and renewal, refuse disposal, licensing and inspection; building codes, electrical codes, housing codes, plumbing codes, water and air pollution control, agricultural services, and such other services and activities as may be provided for the general use or benefit of persons residing in the territory of the Merged Government.

The foregoing enumeration is intended as a list of those governmental services and activities which shall be initially performed by the Merged Government within the General Services District and shall not be construed to limit the right of the Merged Government to furnish, provide and maintain other governmental services throughout the General Services District as the Council may from time to time prescribe.

Section 2.06 Additional Functions to be Provided in the Full Urban Services District.

In addition to those services and activities furnished, provided and maintained in the General Services District, the Merged Government shall provide the following additional services within the Full Urban Services District: sanitary sewers, street lighting, street cleaning, garbage and refuse collection, and such additional fire and police protection as may be required.

The foregoing enumeration is intended as a list of those additional governmental services which shall be initially performed by the Merged Government within the Full Urban Services District and shall not be construed to limit the right of the Merged Government to furnish, provide and maintain other governmental services throughout the Full Urban Services District as the Council may from time to time prescribe.

Section 8.06 Levy of Taxes.

Following the final adoption of the annual operating appropriation ordinance on or before the thirtieth day of June each year, the Council shall:

a) Levy, by ordinance, an ad valorem tax on all properties, real and personal, within the General Services District as are now or hereafter may be subject to such taxation by counties containing cities of the second class under the Constitution and laws of the Commonwealth of Kentucky. The rates set by ordinance for the ad valorem tax on property within said services district shall not exceed those established by the Constitution and laws of the Commonwealth of Kentucky for counties containing cities of the second class, and shall be consistent with the provisions of this Charter governing ad valorem taxes within the General Services District. In addition, said tax rates shall be based on a reasonable estimate of the cash revenues required from ad valorem property taxes to cover those appropriations made under Part I of the annual operating and capital improvements budget ordinances for the General Services District.

b) Levy, by ordinance, an additional ad valorem tax on all properties, real and personal, within the Full Urban Services District and such Partial Urban Services Districts as may be created or established by the Council as are now or hereafter may be subject to such taxation by cities of the second class under the Constitution and laws of the Commonwealth of Kentucky. The rates set by ordinance for the additional ad valorem tax on property within said services districts shall not exceed those established by the Constitution and laws of the Commonwealth of Kentucky for cities of the second class, and shall be consistent with the provisions of this Charter governing ad valorem taxes within the Full Urban Services District and Partial Urban Services Districts. In addition, said tax rates shall be based on a reasonable estimate of the cash revenues required from ad valorem property taxes to cover those appropriations made under Part II of the annual operating and capital improvements budgets or ordinances for the Full Urban Services and Partial Urban Services Districts not covered by the ad valorem tax imposed on property within said districts under the provisions of this Charter governing the General Services District.

c) Levy, by ordinance, such other taxes as are now or hereafter may be levied by counties containing cities of the second class or by cities of the second class themselves under the Constitution and laws of the Commonwealth of Kentucky as may be required to meet the annual appropriations for the General Services District, the Full Urban Services District and such Partial Urban Services Districts as the Council may create. All tax levies made under this section shall be uniform throughout the territorial limits of the Merged Government, and shall be based on a reasonable estimate of the cash revenues required to cover the appropriations made under Parts I and II of the annual operating and capital improvements budget ordinances not covered or anticipated by the levy of the ad valorem tax imposed on property located within the General Services District, the Full Urban Services District, or such Partial Urban Services Districts as may be created by the Council.

The Merged Government Council shall provide, by ordinance, for the manner and method of collecting all delinquent taxes due the Merged Government as may be consistent with the laws of Kentucky.

§ 157. Tax rate; indebtedness; submission of question to voters.—The tax rate of cities, towns, counties, taxing districts and other municipalities, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein, viz: For all towns or cities having a population of fifteen thousand or more, one dollar and fifty cents (\$1.50) on the hundred dollars (\$100.00); for all towns or cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars (\$100.00); for all towns or cities having less than ten thousand, seventy-five cents (75c) on the one hundred dollars (\$100.00); and for counties and taxing districts, fifty cents (50c) on the hundred dollars (\$100.00); unless it should be necessary to enable such city, town, county, or taxing district to pay the interest on, and provide a sinking fund for the extinction of indebtedness contracted before the adoption of this Constitution. No county, city, town, taxing district, or other municipality, shall be authorized or permitted to become indebted, in any manner or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters thereof, voting at an election to be held for that purpose; and any indebtedness contracted in violation of this section shall be void. Nor shall such contract be enforceable by the person with whom made; nor shall such municipality ever be authorized to assume the same.

§ 171. Levy and collection of taxes by general laws; public purposes only; uniform within the class and territory; classification of property; bonds of state and its divisions exempt; referendum on act classifying property.

The general assembly shall provide by law an annual tax, which with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

The general assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation.

Any law passed or enacted by the general assembly pursuant to the provisions of or under this amendment or amended section of the constitution, classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate, shall be subject to the referendum power of the people, which is hereby declared to exist to apply only to this section, or amended section. The referendum may be demanded by the people against one or more items, sections or parts of any act enacted pursuant to or under the power granted by this amendment, or amended section. The referendum petition shall be filed with the secretary of state not more than four months after the final adjournment of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people under this section. All elections on measures referred to the people under this act shall be at the regular general election, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become a law when approved by the majority of the votes cast thereon, and not otherwise. The whole number of votes cast for the candidates for governor at the regular election last preceding the filing of any petition shall be the basis upon which the legal voters necessary to sign such petition shall be counted. The power of the referendum shall be ordered by the legislative assembly at any time any acts or bills are enacted, pursuant to the power granted under this section or amended section, prior to the year of one thousand nine hundred and seventeen. After that time, the power of the referendum may be ordered either by the petition signed by five per cent (5%) of the legal voters or by the legislative assembly at the time said acts or bills are enacted. The general assembly enacting the bill shall provide a way by which the act shall be submitted to the people. The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative. (Amended November, 1915.)

§ 172A. Assessment for ad valorem tax purposes of agricultural and horticultural land.

Section 172A. Notwithstanding contrary provisions of Sections 171, 172, or 174 of this Constitution —

The General Assembly shall provide by general law for the assessment for ad valorem tax purposes of agricultural and horticultural land according to the land's value for agricultural or horticultural use. The General Assembly may provide that any change in land use from agricultural or horticultural to another use shall require the levy of an additional tax not to exceed the additional amount that would have been owing had the land been assessed under Section 172 of this Constitution for the current year and the two next preceding years.

The General Assembly may provide for reasonable differences in the rate of ad valorem taxation within different areas of the same taxing districts on that class of property which includes the surface of the land. Those differences shall relate directly to differences between non-revenue-producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district.

67A.150 Service districts

The territory of an urban-county government may be divided into service districts. Each service district shall constitute a separate tax district within which the urban-county government shall levy and collect taxes in accordance with the kind, type, level and character of the services provided by the urban-county government in each of these districts. The legislative body of the urban-county government may abolish or alter existing districts, or create new districts.

HISTORY: 1974 H 633, eff. 6-21-74

67A.850 Taxing powers

Urban-county government may:

Exercise ad valorem property taxing powers pursuant to the Kentucky Constitution, section 157, to the limits authorized therein for the class of city to which the largest city in the county belonged on the day prior to the date the urban-county government became effective. The taxing powers must be exercised by the urban-county government consistent with the Kentucky Constitution, section 172A, and KRS 132.010, 132.023, 132.027 and 68.245. Provided, in no way will this section and KRS 67A.860 allow an urban-county government to increase the taxes of any district without the urban-county government having first performed its obligations to provide services for such increases.

HISTORY: 1974 H 634, § 1, eff. 6-21-74

67A.860 Extension of urban services; notice to property owner

(1) The chief executive officer of the urban-county government shall notify each property owner by certified mail, of the urban-county government intention to extend urban services which may result in a tax increase to the property owner.

(2) The notice by the chief executive officer shall fix the time and place of a public hearing on the extension of urban services for the affected property.

(3) The notice shall be postmarked no less than ten (10) days prior to the date of the public hearing and thirty (30) days prior to the extension of urban services.

(4) The notice provision shall not apply to extension of urban services, when less than ten (10) contiguous individual parcels of property are to be affected by the extension of urban services.

HISTORY: 1974 H 634, § 2, eff. 6-21-74

82.085 Rate variations in local ad valorem taxes; permission to have

(1) The legislative body of each city of the first, second, third, fourth, fifth, and sixth class may provide by ordinance, for reasonable differences in the rate of ad valorem taxation within different areas of the same taxing district on that class of property which includes the surface of the land. Those differences shall relate directly to differences between non-revenue-producing governmental services and benefits giving the land urban character which are available in one or several areas of a taxing district in contrast to other areas of the same taxing district in which those services and benefits are not available.

(2) These non-revenue-producing governmental services and benefits shall include, but not be limited to, police protection, fire protection, streets, street lighting, sidewalks, water service, and sewer facilities.

(3) This section shall be effective notwithstanding any other statute relating to the uniformity of ad valorem tax assessment.

HISTORY: 1970 S 259, eff. 6-18-70