



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-097

October 24, 2014

The Honorable Kim Hammer
State Representative
1411 Edgehill
Benton, Arkansas 72015-3128

Dear Representative Hammer:

You have requested my opinion on the following questions concerning the levy of property taxes by the City of Benton, Arkansas:

1. May the City of Benton reduce and eventually eliminate the annual tax levy on personal property within the City while at the same time maintaining the tax on real property at a different rate pursuant to Article 12, Section 4 of the Arkansas Constitution?
2. If the answer to question one is "no," may this issue be addressed legislatively?

As background for these questions, you explain that the City is considering eliminating the personal property tax levy over a four-year period while maintaining the real property levy at the current rate, and that this proposed modification is not being done in conjunction with a countywide reappraisal.

RESPONSE

The answer to both of these questions is "no," in my opinion, based on the express language of Amendment 79 to the Arkansas Constitution wherein it provides: "The millage rate levied against taxable personal property and utility and regulated

carrier property in each taxing unit in the state shall be equal to the millage rate levied against real property in each taxing unit in the state.”¹

In interpreting this constitutional provision, we are guided by the same rules of construction applicable to statutory laws.² As noted by the court:

The fundamental rule is that the words of the constitution or statute should ordinarily be given their obvious and natural meaning. *Gipson v. Maner and Gibson v. Young*, 225 Ark. 976, 980, 287 S.W.2d 467 (1956). If the language used in a constitutional provision is plain and unambiguous, the court should not seek other aides [sic] of interpretation in determining the intent of the framers and voters. *Ellison v. Oliver*, 147 Ark. 252, 264, 227 S.W. 586 (1921).³

As also observed by the court:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003). We construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. *Ozark Gas Pipeline Corp. v. Arkansas Pub. Serv. Comm’n*, 342 Ark. 591, 29 S.W.3d 730 (2000). When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Weiss v. McFadden, supra*. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *Id.*⁴

¹ Ark. Const. amend. 79, § 4(b).

² See *Knowlton v. Ward*, 318 Ark. 867, 874, 889 S.W.2d 721 (1994).

³ *Id.*

⁴ *Macsteel, Parnell Consultants v. Ar. Ok. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005).

In my opinion, the above-emphasized text of section 4(b) of Amendment 79 is unambiguous with respect to the questions you have posed. This provision of Amendment 79 clearly mandates that personal property and real property shall be taxed at the same millage rate. The language is simple, direct, and unequivocal. Giving the words their obvious and natural meaning compels a negative answer to both of the questions you have posed.

I note that in presenting these questions, you have placed emphasis upon Ark. Const. art. 12, § 4, wherein it states that “[n]o municipal corporation shall be authorized to ... levy any tax on real or personal property to a greater extent, in one year, than five mills on the dollar of the assessed value of the same[.]” You report a belief that the word “or” in this provision allows for taxation of real and personal property at different rates. In my opinion, this belief is mistaken. My immediate predecessor had occasion to trace the history of this portion of art. 12, § 4, which was part of the original 1874 Constitution. As my predecessor noted, this history reveals art. 12, § 4 to be a **limitation** on the exercise of the taxing power:

... [A]rticle 12, § 4 was one of the provisions of the Arkansas Constitution of 1874 that was adopted in reaction to the state’s recent experience with reconstruction and the “heavy taxes” levied during that period. In describing the 1874 constitution, Dean Barnhart noted:

The General Assembly itself was limited in the rate of taxes that might be levied, as were counties and municipalities, and loan of public credit by state, county, city and or other municipalities was prohibited. . . . In short, the constitution reflected distrust of the executive, the legislative and the judicial branches of the government and kept controls to a very great extent in the hands of the people. . . . The constitution of 1874 was a reaction against the government which preceded it with all of the abuses and dissatisfactions fresh in mind. The eyes of the draftsmen were on an immediate and unhappy past and not upon the visions of a new world.⁵

⁵ Op. Att’y Gen. 2003-036 at 3, quoting Ralph C. Barnhart, “A New Constitution for Arkansas?” 17 Ark. L. Rev. 1, 4 (Winter 1962-63).

Consistent with this intent to limit the taxing power of counties and cities, the Arkansas Supreme Court has identified art. 12, § 4 as an “inhibition of the Constitution” that “[denies] the right to levy ad valorem taxes in excess of 5 mills for any purpose.”⁶ It thus seems clear that art. 12, § 4 is not affirmative authority to tax at all. Rather, it sets a maximum rate of taxation; or as stated by the court, a “constitutional limitation.”⁷

I believe it also bears noting that to read Ark. Const. art. 12, § 4 as authority to levy different rates on real and personal property would appear to be contrary to our constitutional requirement of nondiscrimination in the classification of property for taxation purposes:

The theory of our constitution is that the common burden shall be borne by common contributions. *All property is to be taxed according to its value.*⁸ ‘All’ does not mean all the legislature may designate, or all except such as the legislature may exempt. ***If this were so the whole burden of taxation might be thrown upon land, or upon any one species of property.*** It means all private property, of every possible description, or all property other than that belonging to the state, or the general government. The legislature cannot discriminate between different classes of property in the imposition of taxes. The only discretion with which it is invested, is

⁶ *Adamson v. City of Little Rock*, 199 Ark. 435, 439, 134 S.W.2d 558 (1939).

⁷ *Id.*

⁸ The emphasized language paraphrases Ark. Const. art. 16, § 5, which read in pertinent part as follows when this case was decided:

All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value.

Amendment 59 to the Arkansas Constitution (adopted in November, 1980), discussed further herein, substituted a new section 5 and added sections 14, 15 and 16 to article 16, section 5. Section 5 now provides in pertinent part:

All real and tangible personal property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property for which a tax may be collected shall be taxed higher than another species of property of equal value, except as provided and authorized in Section 15 of this Article, and except as authorized in Section 14 of this Article.

in the ascertainment of value, so as to make the same equal and uniform throughout the state.⁹

This language was cited with approval and emphasized in *Pub. Svc. Comm'n v. Pul. Co. Equalization Bd.*,¹⁰ where the court held that Ark. Const. art. 16, § 5 requires that real and personal property be taxed on an equal basis¹¹ and that assessments of real property at other than present market value violate art. 16, § 5. The court noted “the constitutional mandate of equal taxation for all species of property”¹² and ordered that all 75 counties in Arkansas undergo the process of reappraisal and reassessment of real property to equalize ad valorem taxation rates throughout the State. In response to *Pul. Co. Equalization Bd.*, and to avoid sudden and dramatic increases in tax bills, the General Assembly in 1980 proposed, and the voters approved, Amendment 59 to the Arkansas Constitution.¹³

This history is informative in addressing your questions concerning a proposed reduction and eventual elimination of ad valorem taxes on personal property. As stated by the court, the “overall intent” of Amendment 59 to the Arkansas Constitution¹⁴ “*was to equalize the assessments and millage rates with respect to personal and real property taxes after completion of reappraisal.*”¹⁵ The language of Section 4(b) of Amendment 79 quoted above (requiring that personal and real property be taxed at the same millage rate) is in all respects consistent with Amendment 59’s purpose to proceed toward an equalization of assessments

⁹ *Little Rock & Ft. Smith Ry. Co. v. Worthen*, 46 Ark. 312, 327 (1885) (emphasis added). Of course, pursuant to Amendment 57 to the Arkansas Constitution (adopted in November, 1976), the General Assembly has express authority to classify “intangible personal property” for purpose of valuation and taxation; and Amendment 71 (adopted in November, 1992) exempts from ad valorem taxation “personal property used within the home, if not held for sale, rental, or other commercial or professional use....”

¹⁰ 266 Ark. 64, 582 S.W.2d 942 (1979).

¹¹ See *Crane v. Newark School #33*, 303 Ark. 650, 651, 799 S.W.2d 536 (1990).

¹² 266 Ark. at 75.

¹³ Amendment 59 and its enabling legislation – A.C.A. § 26-26-401 *et seq.* (Repl. 2012) – provide that whenever a countywide reassessment results in an increase of the aggregate value of taxable real and personal property of 10% or more over the previous year, each taxing unit must adjust or roll back taxes.

¹⁴ See n. 13, *supra*, regarding the adoption of Amendment 59.

¹⁵ *Clark v. Union Pac. R.R.*, 294 Ark. 586, 590, 745 S.W.2d 600 (1988) (emphasis added).

and millage rates.¹⁶ If different millage rates are levied once assessments are equalized, there will be a different tax burden on personal and real property – contrary to the principles identified above. In sum, the millage rate must be the same to create the same burden.

In presenting your questions, you have pointed out that the City’s proposal to reduce and eventually eliminate the tax on personal property is not being done as part of a countywide reappraisal. But Amendment 79’s requirement of equal millage rates with respect to real and personal property stands alone and is not tied to any periodic reappraisals.

In sum, and in response to your specific questions, it is my opinion that the City may not tax real and personal property at different rates, and that the legislature may not authorize such a disparity in taxation between different species of property.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,



DUSTIN MCDANIEL
ATTORNEY GENERAL

DM/EAW:cyh

¹⁶ Amendment 79 was added to the constitution in 2000 to mitigate the effects of substantial increases in assessments and taxes that were expected to arise from newly mandated statewide reappraisals. *See Thiel v. Priest*, 342 Ark. 292, 28 S.W.3d 296 (2000). The reappraisals were required in order to correct long-standing and widespread errors, under-valuations, and regional disparities in appraisals and assessments. *See generally* Act 1185 of 1999 (codified at A.C.A. § 26-26-1901 *et seq.*, providing for a cap — and in some cases a freeze — on the increase in assessment values on existing property for ad valorem tax purposes).