

TAXATION AND REVENUE: Under Section 9787 R. S. Mo. 1929, the county court can compel the assessor to carry out the provisions of said section and may use its own discretion concerning compensation

August 24, 1937

Supplementary opinion # 66 dated 8-24-38

Mr. John H. McNatt
Prosecuting Attorney
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Clayton, Missouri



Dear Sir:

This Department is in receipt of your letter of July 12, wherein you request an opinion regarding Section 9787, Revised Statutes Missouri 1929. Your letter is as follows:

"We should like to know whether under R. S. Mo. 1929, sec. 9787, our County Assessor can be required to compile and keep a land list for a full and accurate assessment of all property in this county without being paid therefor out of the County treasury. The County Court has ordered Assessor Neaf to do this work, expecting him to pay for it out of his fees rather than, as the statute requires, out of the County treasury. We should also like to know whether the County Court's order requiring Assessor Neaf to do this work is mandatory.

"Thanking you very much for your courtesy in this matter, I remain."

Chapter 59, Article II, relates to Assessors and assessments of property. Section 9782 refers to the

real estate book and personal assessment book and what the same shall contain. Section 9784 deals with the land list. Sections 9785 and 9786 relate to keeping the mortgage lists and the abstract of lands which are delinquent.

Section 9787, being the one in controversy, reads as follows:

"Nothing in the preceding five sections shall be construed to apply to counties which have already adopted a method of plats and abstracts to facilitate the assessment and collection of the revenue; nor shall the provisions of the preceding five sections apply to counties having a less population than forty thousand, unless a majority of the voters in any such county shall elect to adopt its provisions at a general election, upon the question being ordered to be submitted by the county court; Provided, that in counties having a population of over forty thousand the county court may, in addition to the foregoing provisions for securing a full and accurate assessment of all property therein liable to taxation, or in lieu thereof, by order entered of record, adopt for the whole or any designated part of such county any other suitable and efficient means or method to the same end, whether by procuring maps, plats or abstracts of titles of the lands in such county or designated part thereof or otherwise, and may require the

assessor, or any other officer, agent or employe of the county to carry out the same, and may provide the means for paying therefor out of the county treasury."

It would appear by the terms of Section 9787 that the five preceding sections mentioned shall not affect counties of less than 40,000 population. Your county being of much greater population than 40,000 the attached order of the county court attempts to comply with the last conditions of the section. We note also the copy of the order of the county court covering the year 1934. The last paragraph of the order awards compensation to the assessor for additional clerks and draughtsmen for such length of time as may be necessary for completing and carrying out the method and system adopted by the court. The present order directs the county assessor to carry out the method as provided, but as to the compensation

"finds that the fees of the office of the Assessor of St. Louis County are adequate to pay salaries of sufficient personnel to carry out said method and system without the necessity of payment of salaries of additional personnel out of the County Treasury."

Two questions arise: Is it mandatory on the county assessor to carry out the duties as contained in Section 9787 and the order of the court; and, can he be compelled to do so without additional compensation.

The statute contains the expression, "and may require the assessor or any other officer, agent or employe of the county to carry out the same." By

the terms of the statute it would not appear that it is a duty which would necessarily fall upon the assessor any more so than any other officer, agent or employee of the county. In other words, it does not appear to be a duty common only to the assessor and which he alone, by virtue of his office, could perform. However, it would appear that he is the most logical one to perform the duties.

In the decision of State ex rel. Zoological Board v. St. Louis, 318 Mo. l. c. 922, the court, dealing with Sections 9009 and 9016 of the Revised Statutes of 1919, held to the effect, with reference to compelling officers to perform ministerial acts, as follows:

"Where a specific ministerial duty, which from its terms is mandatory in its nature, is imposed upon an officer, a board or tribunal with respect to the levy, assessment and appropriation of taxes or the expenditure of the same, mandamus will lie to compel its performance."

The Legislature has delegated the county court authority to select one of the officers mentioned in the section to perform the duties as hereinbefore outlined. It is a discretionary act on the part of the county court but once the county court has exercised its discretion, we think that the statute is plain in its terms that it is mandatory on the officers so selected to perform the duties. In other words, if the Assessor has been selected mandamus would lie to compel him to perform the duties.

We next discuss the question of the compensation; likewise, it appears to be a discretionary matter with the county court as in neither instance has the Legislature seen fit to use the mandatory verb "shall," but instead uses the directory or discretionary word "may."

The duties imposed on the Assessor in the instant case, as stated above, fall most logically on that office. In fact, we think that when the county court selects the Assessor as the person to perform the duties it becomes a part of his office. The general rule with respect to the duties of an officer imposed by statute and those not a part of his duties by virtue of his office is tersely stated in 46 Corpus Juris, page 1017, paragraph 242:

"Where the duties of an officer are increased by the addition of other duties germane to the office without provision for compensation, the officer must perform such duties without extra compensation. So, an officer is not entitled to extra compensation because additional duties pertaining to the office have been assumed by him or imposed upon him by the exigencies of the office. But for services performed by request, not part of the duties of his office, which could have been as appropriately performed by any other person, he may recover a proper remuneration. Public policy, however, requires that courts should not favor nice distinctions in order to declare certain acts of public officers extra-official."

We think the last sentence as contained in the quotation from Corpus Juris is to the effect that courts should not favor nice distinctions in order to declare certain acts of public officers extraofficial, and is not applicable to the point under discussion, for the reasons hereinbefore mentioned.

Again, referring to the fact that the statute, by using the word "may," in the last sentence, shows conclusively that it is a discretionary matter as to compensation in reference to paying the Assessor. Therefore, we think that the principles as laid down by the court in the case of Sanderson v. Pike County, 195 Mo. 604, are applicable:

"It will thus be seen that the Legislature has vested in the county court the power to fix the compensation of the treasurer for his general services and for his services in disbursing the school moneys of the county. With this discretion neither this court nor the circuit court has any right to interfere. The county court is a court of record, and its acts and proceedings can only be known by its record. A contract with such court cannot be established by parol evidence. (Maupin v. Franklin Co., 67 Mo. 327; Dennison v. County of St. Louis, 33 Mo. 168.) No record of the county court was produced on the trial of this cause fixing the treasurer's compensation under either of the foregoing sections of the statute. It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer, unless the statute gives it. (State ex rel. v. Adams, 172 Mo. 1-7; Jackson

County v. Stone, 168 Mo. 577; State ex rel. v. Walbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. v. Wofford, 116 Mo. 220; Givens v. Daviess Co., 107 Mo. 603; Williams v. Chariton Co., 85 Mo. 645; Gammon v. Lafayette Co., 76 Mo. 675.)

"Such compensation is not the creature of contract nor dependent upon the fact, or value of services actually rendered (State ex rel. v. Walbridge, supra, and authorities cited on pp. 203 and 204), and cannot be recovered upon quantum meruit. (Wolcott v. Lawrence Co., 26 Mo. 272, and cases supra.)

"This suit was brought upon the theory that under the provisions of section 9849, supra, the plaintiff was entitled to 'one-half of one per cent of all school moneys disbursed by him,' when, in fact, he was only entitled 'to such compensation for his services as the county court may deem advisable,' not exceeding that amount.

"There was no legal evidence tending to prove that the county court deemed it advisable to pay him for such services any more than they did in fact pay him.

"The circuit court by its finding and judgment charged the county for the value of his services upon an implied contract and upon the exceedingly doubtful weight of the parol evidence, when such a contract, either express or implied, could not be established by such evidence, as abundantly appears by the cases cited."

CONCLUSION

Having come to the conclusion that the word "may", as used in both statutes, indicates that the acts of the county court, if it complies with the statute with reference to the duties to be performed, are purely discretionary acts, it would naturally follow that the county court by its discretion in the first instance could compel the Assessor to carry out the duties in said section and, by its discretion with reference to compensation, could allow or could refuse to allow the Assessor compensation. It appears that the county court has exercised its discretion by order to the effect and for reasons best known to it that the Assessor shall not be allowed any compensation.

We are, therefore, of the opinion that such an order is a valid binding order.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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