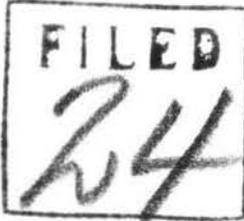


COUNTY COURT:
COUNTIES:
COUNTY ASSESSOR:
ASSESSOR:

The county court of a county of the third class cannot withhold from the compensation due the assessor for performing his duties an amount equal to any overpayment for prior years. Further, the county court may, by appropriate action, recover back any overpayments previously made to the county assessor.



June 7, 1957

Honorable David Donnelly
Prosecuting Attorney
Laclede County
Lebanon, Missouri

Dear Mr. Donnelly:

Reference is made to your recent request for an official opinion, which request reads as follows:

"The County Court of this County has asked me to present the following situation to you for an official opinion.

"The Assessor of this County, on numerous occasions in the past, has made what we term double assessments pertaining particularly to personal property taxes. For example, the Assessor will many times assess personal property taxes against Mary Jones and also against Mrs. John Jones who is the same person. Sometimes this double assessment is caught by the County Collector of Revenue before he makes his monthly assessment with the County Court, but frequently this can not be done until after his monthly settlement and, therefore, the Assessor feels he is entitled to his commission on both assessments.

"The Assessor will turn his books in to the County Court on June 1, 1957, and will expect his commission to be paid on that date. Therefore, is the County Court authorized to deduct erroneous double assessments for the year 1956, made by the Assessor, from his 1957 commissions? Also, since this Assessor will not succeed himself in office, can the County Court later recover from him commissions paid to him from his 1957 assessment which may later be found to be double assessments?

Honorable David Donnelly

"If at all possible, the County Court would appreciate having your opinion prior to June 1, 1957, the date on which the Assessor will expect his commission to be paid."

We note that your county is a county of the third class, and refer to Sec. 53.130, RSMo Cum. Supp. 1955, relating to the compensation of the assessor in counties of said class. This section provides as follows:

"The compensation of the county assessor in counties of the third class shall be sixty cents per list, and each county assessor shall be allowed a fee of six cents per entry for making real estate and tangible personal assessment books, all the real estate and tangible personal property assessed to one person or to husband and wife to be counted as one name, one half of which shall be paid out of the county treasury and the other one half out of the state treasury. The assessor in counties of the third class shall place the street address or rural route and post office address opposite the name of each taxpayer on the tangible personal property assessment book; provided, that nothing contained in this section shall be so construed as to allow any pay per name for the names set opposite each tract of land assessed in the numerical list."

Suffice it to say it is not the duty of the assessor to cause to be made more than one listing of personal property subject to taxation and owned by the same person, nor do we find any warrant or authority for the assessor to make more than one entry of the same property owned by the same person in the "assessor's book." Section 137.210, RSMo 1949.

Section 53.130, supra, is designed to compensate the assessor for the duties he is required by law to perform. It is, of course, a fundamental rule of statutory construction that the right to compensation for the discharge of official duties is purely a creature of statute, and an officer can recover no other or further compensation, nor by a different mode than that provided by statute. *Ward v. Christian County*, 341 Mo. 1115, 111 SW2d 182; *King v. Riverland Levee Dist.* 218 Mo. App. 490, 279 SW 195; *Nodaway County v. Kidder*, 344 Mo. 795, 129 SW2d 857; *Holman v. City of Macon*, 155 Mo. App. 398, 137 SW 16.

Honorable David Donnelly

We do not find any other statute relating to the compensation of the assessor, and more particularly any statute which authorizes compensation to the assessor for taking more than one list or making more than one entry of taxable property belonging to the same person.

You first inquire whether the county court can withhold from the compensation due the assessor for performing his duties for the year of 1957 an amount equal to any overpayment to said assessor for prior years. Section 53.130, supra, allows the assessor compensation for duties performed annually. We find no authority by which the county court can withhold from compensation rightfully earned in any one year amounts equal to any overpayment for prior years, and, therefore, are of the opinion that such may not be done. What may or may not have been done in prior years in nowise affects the assessor's right to compensation for the current year.

Secondly, you inquire as to whether the county court can otherwise recover back compensation paid to the assessor without warrant of law. The Supreme Court has recognized the right of a county to recover money paid to an officer to which he is not entitled by law. In the case of Nodaway County v. Kidder, 344 Mo. 795, 129 SW2d 857, the court stated:

"* * * When a public official wrongfully receives public funds, although paid to him under an honest mistake of law, he must restore such funds. Lamar Township v. City of Lamar, 261 Mo. 171, 187, 169 S.W. 12; State ex rel. Barker v. Scott, 270 Mo. 146, 153, 192 S.W. 90; State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 536; State ex rel. Jarvis v. Dearing, Mo. App., 274 S.W. 477; Atchison County v. DeArmond, 60 Mo. 19.

"The rule is stated in 15 C.J. 509, Sec. 176, as follows: 'Money paid to a county officer to which he is not entitled by law may be recovered back, without previous demand, in an action for money had and received instituted by the county.'

"The rule is also stated as follows: As a general rule any compensation paid to a public official by the state or other governmental body not authorized by law, or in excess of the compensation authorized by law, may be recovered by the proper governmental body * * *. 46 C.J. 1030, Sec. 285."

Honorable David Donnelly

In regard to this question I am enclosing herewith a copy of an opinion to Sam Appleby, Prosecuting Attorney of Christian County, issued under date of March 23rd, and holding that the county may recover any overpayment that has been made by it through the county court to the assessor.

It is no defense to an action to recover money paid to a county officer that the account between the officer had been adjusted or settled, or that the money was voluntarily paid. 20 C.J.S., Counties, Sec. 128, pp. 939-940.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that the county court of a county of the third class cannot withhold from the compensation due the assessor for performing his duties an amount equal to any overpayment for prior years.

It is the further opinion of this office that the county court may by appropriate action recover back any overpayments previously made to the county assessor.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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