

TAXATION & REVENUE: County assessor has no legal authority to assess property at twenty per cent less than its actual value. State Board of Equalization to equalize taxes. Mandamus is the remedy to compel actual value assessment.

November 9, 1939

Honorable Ellsworth Haymes
Prosecuting Attorney
Webster County
Marshfield, Missouri

11-10
FILED
38

Dear Sir:

This Department is in receipt of your letter of October 27th, wherein you make the following request:

"The assessor in this county (Webster) published a notice in a paper when he started his assessing for this year, stating that he was reducing the valuation of all farm lands 20%. While much of the farm land in this county is over assessed, there is quite a bit of it which is undervalued. While I have no doubts that this is an erroneous method of assessment, I have been unable to find a satisfactory remedy for the county. I would like to have your advice as to how to proceed to force the assessor to value the property at its actual value.

"Also would like to ask you a question regarding the raise in salary of Prosecuting Attorney's and County Clerks. In many adjoining counties these two officers have drawn their raise from the 22nd day of September. However I have advised the Court that we were not entitled to the raise until November because they are denominated as revision bills. Please tell me if I am correct in that assumption."

Under Section 9792, R. S. Mo. 1929, the pertinent part of which is as follows:

"The assessor shall value and assess all the property on the assessor's books according to its true value in money at the time of the assessment; and all other personal property shall be valued at the cash price of such property at the time and place of listing the same for taxation,"

it is the duty of the assessor to assess property at its true value.

It is the duty of the assessor under Section 9800, R. S. Mo. 1929, to make and return to the county court, on or before the 20th day of January in every year, a fair copy to the assessor's book, verified by his affidavit annexed thereto "that, so far as he has been able to ascertain the same, it is correctly set forth in the foregoing book, in the manner and the value thereof stated therein, according to the mode required by law."

Under Section 9812, R. S. Mo. 1929, the board of equalization in each county has certain powers relative to fixing the valuation of taxable property in the county, with the proviso, "that said board shall not reduce the valuation of the real or personal property of the county below the value thereof as fixed by said state board of equalization."

It was held in the case of *State ex rel. v. Bethards*, 9 S. W. (2d) 603, that the county board of equalization is authorized to hear complaints and equalize valuation, but has no power to assess; and it was also held in the case of *Terminals v. Koeln*, 3 S. W. (2d) 1021, that the value of the property to be assessed, by the assessor or board of equalization, is not conclusive on the state board of equalization.

A decision bearing on the statutes which we have heretofore mentioned is that of *Bank of Carthage v. Thomas*,

330 Mo. 19, l. c. 29, wherein it was held as follows:

"Section 9792, Revised Statutes 1929, commands the assessor to 'value and assess' all property 'according to its true value in money.' 'The "values" mentioned in the statutes are the valuations of the officials whose duty it is to make them . . . The requirement of section 12802 (Sec. 9792, R. S. 1929), that the assessor assess the property at its true value in money, means nothing more than that such true value is his estimate, his valuation.' (State ex rel. Thompson v. Bethards, 320 Mo. 1164, 9 S. W. (2d) 603.) The law contemplates that, in accordance with Section 9792, Revised Statutes 1929, the assessor did 'value and assess' the personal property of each of the plaintiff banks at what he judged, considered or deemed to be its true value in money. But such valuation is not a final and conclusive determination of the true value of the property for the statute, Sections 9812 and 9813, Revised Statutes 1929, provides that the county board of equalization in equalizing 'the valuation and assessments' upon all property within the county 'shall raise the valuation' of any property 'such as in their opinion' has been returned below its 'real value' and 'reduce the valuation' of any property 'which in their opinion has been returned above its true value as compared with the average valuation' of property within the county. 'But such findings of true value (by the assessor and county board of equalization) are not conclusive upon the state board of equalization, which is a creature of the Constitution, and Section 12855, Revised Statutes 1919 (Sec. 9863, R. S. 1929), a law equal in authority, dignity, and force with the statutes

above cited (Secs. 9792, 9812 and 9813, R. S. 1929), requires such board to "add to the valuation of each class of the property, real or personal, of each county which it believes to be valued below its real value in money such per centum as will increase the same in each case to its true value," and to "deduct from the valuation of each class of the property, real or personal, of each county which it believes to be valued above its real value in money such per centum as will reduce the same in each case to its true value," although such exercise of its judgment as to true values may result in raising some individual assessments above values previously fixed as true. Such action of the state board of equalization is conclusive.' (Columbia Terminals Company v. Koeln, Collector, 319 Mo. 445, 3 S. W. (2d) 1021.) The presumption that the valuation fixed by the State Board of Equalization 'is the true value attaches' to the action of that board. (State ex rel. Thompson v. Bethards, supra.) The State Board of Equalization in the performance of its duties acts judicially (State ex rel. v. Vaile, 122 Mo. 33, 26 S. W. 672; State ex rel. Johnson, Collector, v. Merchants' & Minors' Bank, supra, Jefferson City Bridge & Transit Company v. Blaser, supra) and it is presumed that in making its finding fixing the aggregate valuation of bank stock in Jasper county it acted upon proper and sufficient evidence, facts and information. Such finding is therefore final and conclusive and becomes the aggregate true value of such property for taxation."

Nov. 9, 1939

We are of the opinion, by the above decision, that the action of the county assessor, in assessing property at twenty per cent less than its actual value, may be reviewed and the true value assessed by the county board and the State Board of Equalization.

But in answer to your question as to any remedy you may have to compel the assessor to assess the property at actual value in the first instance, we think that the remedy used in *State ex rel. v. Dirckx*, 11 S. W. (2d) 38, would be appropriate; and likewise in the decision of *State v. Bethards*, *supra*, the remedy in each instance being by the writ of mandamus.

In reply to your question regarding the additional salary of the prosecuting attorneys and county clerks, as to the time it becomes effective, we are enclosing an opinion rendered by this Department on October 24, 1939, to Mr. W. A. Holloway, Chief Clerk, Auditor's Office, Jefferson City, Missouri, wherein a similar question is discussed and a conclusion reached. It would therefore appear by the enclosed opinion that the effective date is November 1, 1939.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

OWN:EG
Enc.