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August

TAXATION: County court may not control the county assessor
ASSESSORS: in determining the assessment lists of personal
COUNTY COURTS: property which he will make.

June 22, 1948



Honorable W. R. J. Hughes
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Ironton, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you submit a request for an official opinion in the following language:

"It has been the habit of the Assessor to assess everyone in Iron County regardless of amount of property owned, arbitrarily listing most of our indigent poor as owning property of much less than \$50 in value, in some cases as little as \$10, and to charge the County for each such list. At \$.45 each list, for half of which Iron County is responsible, the County therefore finds itself paying out for the list alone much more than the amount of tax realizable. Most of these tax assessments are absolutely uncollectable, and the County finds itself throwing away money.

"The Court would like your opinion on whether they can insist that the assessor prepare no list where the one assessed owns less than, let us say, \$100 worth of taxable property. In other words, can the Court refuse to pay for such lists as show on their faces that the amount realizable in taxes cannot equal the assessor's fee?"

The substance of your request is the question of the authority of the county court to control the assessor in the performance of his duties, and especially in cases where the tax on the value of the personal property, which the assessor includes in the list, is less than the amount of costs for which the state and county would be liable for the assessment.

Since Iron County is a county of the fourth class, we will refer to general statutes relative to assessors and to statutes applicable to counties of the fourth class, relative to the same officer. Under Section 8, page 1801, Laws of Missouri, 1945, it is provided as follows:

"All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except tangible personal property belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction."

Under this section, it will be seen that there is no minimum or maximum amount fixed which would excuse any person who owns tangible personal property from his liability for taxes. Under Section 4, page 1800, it is provided that every person owning or holding real or tangible personal property on the first day of January is liable for taxes thereon during the same calendar year. Referring to Section 10, Laws of Missouri, 1945, page 1785, which relates to the duties of the assessor in making assessments, we find that it provides in part as follows:

" * * * After receiving the necessary forms the assessor or his deputy or deputies shall, except in the City of St. Louis, between the first day of January and the first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town or district, and assess the same at its true value in money in the manner following, to wit: * * * * "

By this provision, it will be seen that it is the duty of the assessor to list all personal property in his county. Under Section 11 of the act, related to taxation and revenue, found at page 1786, Laws of Missouri, 1945, the procedure in case of absence of the taxpayer and failure to make the list, is set out as follows:

"If any person required by this chapter to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the

office, or the usual place of residence or business of such person, a printed assessment blank and a printed notice, requiring such person to make out and mail or take to the office of said assessor, not more than twenty days from the date of such notice, a sworn statement of the property which he is required to list. If any such person shall have died prior to the time when the assessor calls for such list, the assessor shall deliver such assessment blank and printed notice to the executor or administrator of such deceased person, and such executor or administrator shall make out and deliver to the assessor such sworn statement of all the property of such decedent. The date of leaving such notice and the name of the person required to list the property shall be carefully noted by the assessor; and if any such person shall neglect or refuse to deliver the statement, properly made out, signed and sworn to as required, the assessor shall make the assessment, as required by this chapter."

This section sets out the procedure that the assessor should follow in order to make a valid assessment in cases in which he cannot make a personal call on the taxpayer. In addition to Section 11, supra, Section 14, page 1787, Laws of Missouri, 1945, makes the further provision in case no list is given. It provides as follows:

"Whenever there shall be any taxable property in any county, and from any cause no list thereof shall be given to the assessor in proper time and manner, the assessor shall himself make out the list, on his own view, or on the best information he can obtain; and for that purpose he shall have lawful right to enter into any lands and make any examination and search which may be necessary, and may examine any person upon oath touching the same."

This section is especially applicable when the assessor finds property in his county upon which no assessment has been made. In construing taxing statutes relating to the duties of the assessor, with respect to making a valid assessment, the court, in the case of *Cape Girardeau vs. Buehrmann*, 148 Mo. 198, l.c. 206, said:

"The assessor left no copy of his assessment with any member of defendant's family. This is a substantial right secured to the citizen and we have no disposition or right to construe it out of the statutes. To neglect it is to ignore the right of a taxpayer to seek to redress if the assessment is unjust."

Section 18 of the act, referring to taxation of revenue, page 1788, Laws of Missouri, 1945, provides as follows:

"Whenever an assessment of property is made in the absence of the owner thereof, a duplicate list of such assessment shall be left, at the time of assessment, with some other member of the family not less than fifteen years of age, or with whoever may be in charge of such property. If the owner of the property is a non-resident, and neither he nor his agent is present when the assessment is made, a duplicate of the assessment shall be mailed by the assessor to the owner at his last address, if known."

Under this section, it will be seen that the procedure for the assessor to follow, in case of absence of the taxpayer when the assessment is made, is set out. In discussing this procedure, the court, in the case of State ex rel. Wenneker vs. Cummings, 151 Mo. 49, l.c. 58, said:

" * * * The assessor is required to call in person at the office, place of doing business or residence of each person subject to taxation, and require such person to make a correct statement of all taxable property owned by such person, or under the care, management, or charge of such person. If the owner is not at home, the statute requires that a written or printed notice be left at the place of business or residence of the taxpayer, notifying such person to make a list, and the assessor is required to specifically note the date of the service of such notice. By this personal call or written or printed notice, the taxpayer is secured the privilege of

stating exactly what property he has and its value. When this call is made on the taxpayer, and request made on him for his list, or, if he be absent, the notice is left for him, within the period from June 1st to January 1st succeeding, then jurisdiction is obtained to assess his property. * * * "

So, it will be seen, by a statement of the court in the two cases cited above, that before the assessor can acquire jurisdiction to make an assessment, he must have followed the provisions of the statute in making the assessment personally on the taxpayer or by leaving a duplicate list of such assessment with some member of the family, not less than 15 years of age, or with whoever may be in charge of the property. We have referred to these sections for the procedure for making a valid assessment because this might enter into the question of whether assessments lists should be paid for by the county and state.

The compensation of assessors of counties of the fourth class is provided for in Section 1, page 1553, Laws of Missouri, 1945. This section provides as follows:

"The compensation of the county assessor in counties of the fourth class having a population of 7500 or more shall be 45 cents per list, and in counties having a population of less than 7500 shall be 45 cents for each personal assessment list and resident land list and 20 cents for each non-resident real estate assessment list, and in all the counties of the fourth class, each county assessor shall be allowed a fee of 6 cents per entry for making real estate and tangible personal assessment books, all the real estate and tangible personal property assessed to one person 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 fourth 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."

The laws applicable to compensation of county assessors were reenacted in Laws of Missouri, 1945, in order to comply with provisions of the Constitution, that is, as to classification of counties. However, the provisions relating to the procedure of assessors in such counties was not changed. Therefore, we will look to the construction placed on some of these acts by the court prior to the 1945 reenactments. In the case of State ex rel. vs. Gomer et al., 101 S.W. (2d) 57, the court, after reviewing the various statutes which we have referred to hereinbefore, announced the following conclusions, I.c. 66:

"First. That an assessor should obtain a list in the form prescribed by section 9756, R. S. 1929 (Mo. St. Ann. Section 9756, p. 7872), from every person who owns 'taxable personal property in his county,' and should require such list to contain 'a list of all the real estate and its value' owned by such persons.

"Second. That whenever from any cause a list of any taxable personal property is not delivered to him by the owner or his representative, then the assessor shall make a list thereof as required by section 9760, R. S. 1929 (Mo. St. Ann. Section 9760, p. 7877), or if the owner of such property is deceased then as required by section 9763, R. S. 1929 (Mo. St. Ann. Section 9763, p. 7879).

* * * * *

"Fifth. That an assessor is required to make 'Part Second' of his book denominated 'Personal Property,' from the lists taken by him from property owners, or made out by him whenever, for any cause, it has not been possible to obtain from the owner a list of any taxable personal property which he has been able to locate.

* * * * *

"Seventh. That as for compensation for taking the lists required to be delivered

to him by owners of personal property (in counties of not more than 40,000 population) an assessor should be paid 35 cents for each list taken and should also be paid a fee of 3 cents per entry for each entry, of a property owner's name and the personal property assessed to him, in the alphabetical list in the part of his book covering personal property.

* * * * *

"Ninth. That the county and the state shall each pay one-half of the compensation for taking lists, and for making proper entries in both the land list and the personal property list."

It will be seen by the ruling of the court in this case that it is the duty of the assessor to list all personal property of taxpayers residing in his county, and there is no limitation, maximum or minimum, which would excuse him from listing all property and property owners. Under the general rulings, public officials may not exercise any duties outside of the scope of the statutes creating their offices. We find no statute or constitutional provision which would authorize the county court to regulate or control the county assessor in making his assessments. The court may equalize values when it is sitting as a board of equalization, but it does not have authority to determine what assessments the assessor will make.

CONCLUSION

Therefore, the opinion of this department is that the court may not control or regulate the county assessor in determining what assessments of personal property he will make; that under the law it is his duty to assess all property in the county, and if he makes valid assessments, then he should be compensated therefor as is provided by Section 1, page 1553, Laws of Missouri, 1945.

Respectfully submitted,

APPROVED:

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TWB:VLM