

COUNTY ASSESSOR: A county assessor who has failed to make a real property list within the time and manner prescribed by law cannot subsequently make such a list and receive compensation therefor.

September 17, 1951

9-18-51

Honorable John H. Mittendorf
Prosecuting Attorney
Johnson County
Warrensburg, Missouri



Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"The Assessor of this County has requested an opinion on the following question:

"In making the Assessment of Personal Property and the Real Estate for the year 1950, I did not make a list of each piece of Real Property which I am required to do and for which I am entitled to receive compensation under Sections 137.075, 137.080, 137.115, 137.120, 137.175, 137.130 and 53.130 Revised Statutes of Missouri 1949. According to the above sections of R.S. of Missouri 1949, I believe I am entitled to make out the Assessment Lists for the Real Estate and receive compensation for the lists I did not make in 1950. Please advise me if I am entitled to make lists of Real Estate for the year 1950, which I have not made, and which I am entitled to make and to receive compensation for same."

Subsequent to the receipt of your letter of request, we have been informed verbally by your county assessor that in the year 1950 he did make lists of real estate belonging to non-resident owners, but that he did not make any other lists of real estate. He has further informed us that he did assess all of the real estate in the county, but, as stated above, that he made lists only of real estate owned by non-residents.

The question which you ask is whether the assessor may now make lists of all the real estate in the county which he assessed in 1950, but for which he did not make lists, and receive compensation therefor.

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Section 137.115, RSMO 1949, states in part:

"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: * * *"

It will be noted that the above section requires the assessor, between the first day of January and the first day of June of each year, to make a list of all real and tangible personal property in his county. Section 53.130, RSMo 1949, provides compensation for the assessor for making the lists mentioned in Section 137.115, supra. Section 53.130, RSMo 1949, states in part:

"The compensation of the county assessor in counties of the third class shall be forty-five 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 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. * * *"

It will be observed that Section 137.115, supra, makes it mandatory upon the assessor to make his lists of all real and tangible personal property between the dates of January first and June first of each year. This the assessor of Johnson County did not do for the year 1950, except, as noted above, in the case of real estate owned by non-residents. He did make a list of all tangible personal property.

If the assessor can now, fifteen months after the time when he was required to complete his real estate lists for 1950, make such lists and receive compensation therefor, it can only be upon the ground that the law allows exceptions to the time stated for making such lists as set forth in Section 137.115 quoted in part above.

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We are unable to find, either in the law or in the cases, any such exception. We have carefully noted the sections of Missouri law cited by you in your letter to us, but we cannot see that any of them apply to the instant situation.

It is a well established law in Missouri that before a public officer is entitled to receive compensation, he must be able to point out a specific law which entitles him to such compensation. This, as we stated above, we are unable to find for your assessor under the circumstances set forth.

We are of the opinion that a county assessor cannot receive compensation for real estate lists made after the time fixed by Section 137.115, supra, for making such lists.

In 1903 the St. Louis Court of Appeals rendered its opinion in the case of City of Hannibal ex rel. v. Bowman, 98 Mo. App. 103. This case did not touch upon the matters involved in the instant case, but in that opinion the court stated, as dictum, in reference to limits upon the power of an assessor, that, l.c. 108:

"He can only proceed at the time and in the manner pointed out by statute and to justify his assessment he must be able to put his finger on the statute that gives him the authority to make it. Welty on Assessments, p. 36; Cooley on Taxation (2 Ed.), p. 42, note 3; Hamilton v. Amsden, 88 Ind. 304; Whitney v. Thomas, 23 N.Y. 281. * * *"
(Emphasis ours.)

In the instant case the assessor clearly did not proceed, in the making of real estate lists, "at the time," prescribed by statute, nor "in the manner."

In the 1921 case of State ex rel. Flaugh v. Jaudon, 286 Mo. 181, the Supreme Court of Missouri held, l.c. 192, that:

"* * * in each year from June 1st to the following January 1st, there must be listed and assessed all real estate, and it might be added all personal property, but such is not here involved. This assessment so made forms the basis for the state and county taxes of the next year, or the year beginning with the January 1st, upon which the assessment by the assessor is presumed to close.
* * *"

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The above case was decided before the change in assessment dates, but it is our belief that the same legal principle, which is that the assessment and lists must be completed within the time prescribed by statute, would be equally applicable at this time.

The 1936 case of State v. Gomer, 340 Mo. 107, l.c. 114, holds that:

"* * * The assessor is required to 'value and assess all the property' on his books 'according to its true value in money' and to return a copy thereof to the county court within the time fixed. * * *"

The Jaudon and Gomer cases cited above sustain the plain language of the statute that assessors' lists must be made within the time prescribed by statute.

The Gomer case also holds, l.c. 116, that:

"* * * No doubt the purpose for requiring real estate to be listed in the personal property list, delivered to the assessor, was to give him information in order to assist him in keeping his books correct and up to date as to descriptions and owners of land, and to show the owner's idea of its value. * * *"

In the 1903 case of State ex rel. v. Carr, 178 Mo. 229, the court held, l.c. 238, that:

"Moreover, such lists whether made by the taxpayer or by the assessor are only memoranda for the personal use of the assessor in making up the assessment book. They are not evidence in a suit for the collection of the taxes assessed."

In the 1905 case of State ex rel. v. Birch, 186 Mo. 205, the court held, l.c. 214:

"* * * The assessment lists are mere preliminary memoranda for the assessor's use, and not evidence in a suit for the collection

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of taxes. (State ex rel. v. Carr, 178 Mo. 229.) The tax books are the primary evidence. (State v. Hutchinson, 116 Mo. l.c. 402.) * * *

The Gomer, Carr, and Birch cases cited above, point out that the assessment lists are made solely for the personal use of the assessor to assist him in making his assessments, and are in the nature of memoranda. The making of such lists long after the assessments have been made would, from the standpoint of the county and state, be completely pointless and without the slightest value.

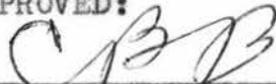
CONCLUSION

It is the opinion of this department that a county assessor who has failed to make a real property list within the time and manner prescribed by law cannot subsequently make such a list and receive compensation therefor.

Respectfully submitted,

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APPROVED:



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