

ASSESSOR:
ASSESSMENTS:
TAXATION:

In counties of the third and fourth class having a population of less than forty thousand inhabitants, it is discretionary with the assessor as to whether contiguous lots in one ownership are to be assessed as a unit or individually. Further, if in the discretion of the assessor contiguous lots in one ownership are assessed individually, and so entered on the tax books, the assessor would be entitled to a fee of six cents for making each entry.



April 11, 1957.

Honorable Lon J. Levvis
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Mr. Levvis:

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

"I would like to have your opinion on the following questions:

"1. A and B are partners in the development of subdivisions of land in the City of Mexico. They, with their wives, own all of the lots in a certain subdivision. Houses have been built on three of said lots. The subdivision plat has been duly recorded, and the lots are designated on said plat by numbers in an approved manner. The owners expect to sell many of said lots during the year and they want the County Assessor, in assessing for taxes, to assess said lots as individual lots, so that, later on, they can obtain a proper tax bill for only such lots as shall remain unsold. Audrain County is a county of the third class. Its population is less than 40,000, and the electors of the County have never voted to operate under the provisions of sections 137.215, 137.220, and 137.225 of our present statutes. Therefore, I have concluded and advised, on authority of section 137.230, that sections 137.215, 137.220, and 137.225 have no application to this County. However, the Assessor has insisted to said owners that he is required by law to assess the lots of said subdivision as one tract. Would it be lawful for him to assess said lots individually, and, if so, is it his duty to so assess them, and can he lawfully be required to do so?

"2. If said Assessor should assess individually the lots described in the foregoing question, in which case

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he would have to make a separate entry for each lot on his real estate tax book, would he be entitled to receive pay of six cents for each of said items or entries?

You first inquire whether the assessor, in performing his duties, may assess, separately, lots in a subdivision which are all owned by the same person or persons, or whether said officer is required to consolidate all such lots owned by the same person or persons in making the assessment.

Section 137.215, RSMo 1949, provides that in assessing property the assessor "shall assess all town lots owned by one person in a square or block into one tract, lot or call, when it is practicable".

Section 137.225, RSMo 1949, provides that the assessor "shall consolidate all lots owned by one person in a square or block into one tract, lot or call".

An opinion of this office to Elton A. Skinner, Prosecuting Attorney of Howard County under date of November 29, 1951, held that said sections did not apply to counties of under forty thousand population, in the absence of an election wherein a majority of the voters vote to adopt said provisions. A copy of said opinion is enclosed herewith. We note that you state that the voters of Audrain County have not voted to operate under the provisions of Sections 137.215 and 137.225. In view of the foregoing, and in the absence of any other statutory provision, we are of the opinion that the assessor is not required to consolidate all town lots owned by one person in a square or block into one tract, lot or call. By virtue of the same reasoning, i.e., the lack of any statutory direction, we are of the opinion that the assessor, in performing his duties, is not required to assess, separately, lots of the subdivision forming one contiguous tract and owned by the same person or persons. Various statutes relating to the assessment of property refer to tracts of land or "town lots". See Sections 137.165, 137.170, 137.235, 137.270, etc. However, we do not understand said reference to require the assessor to assess, separately, lots in a contiguous tract which are owned by the same person or persons.

We have been unable to find a reported Missouri case where the precise question here involved has been ruled upon. However, we direct your attention to the case of Phelps v. Brumback, reported in 107 Mo. App. 16. That case involved the sale of land for taxes. The defendants contended that the sale was invalid for the reason that there was no valid assessment giving rise to a lien in favor of the state. Such contention was apparently

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based upon the fact that three lots had been assessed together. The assessment in that case was governed by the charter provisions of the City of Kansas City, which the court noted as follows:

"Section 14, Article 5, of the charter requires: 'The assessor shall return on his assessment book of real property, in tabular form, each parcel of real estate subject to taxation, with the description and value thereof, in numerical order as to the lots and blocks, or sections, or subdivisions,' etc. And, 'when any property is not laid off in lots or blocks, the assessor shall describe the same by pertinent description,' etc."

The court in its opinion then stated:

" 'It is generally made imperative that separate and distinct parcels of land shall be assessed separately. This is certainly essential where the lands are resident or seated, and in the occupancy of different persons, each of whom has a right to know exactly what demand the government makes upon him.' Cooley on Taxation, 400. But this rule is not imperative where the whole is still owned as one parcel. Cooley on Taxation, 402; Jennings v. Collins, 99 Mass. 29. It seems to have been a mere informality at most. Davis v. McGee, 28 Fed. 867. No error or irregularity in any assessment of land, 'shall in any manner affect or impair the validity of any tax or any sale or other proceeding for their collection.' Sec. 66, art. 5, supra. As the property, the three lots, were held by Orrison when the tax was assessed, and conveyed by him as such to the trustee, and by the trustee to defendants, their assessment as one parcel was, to say the most, a mere irregularity if that under said section 14, supra, and its validity is supported by all the authorities."

We, therefore, conclude that it is discretionary with the assessor as to whether lots in a contiguous tract, owned by the same person or persons, should be separately assessed or consolidated for the purpose of assessment.

You next inquire if the assessor is entitled to receive six cents for each lot or entry, if he does in fact assess individual lots in a contiguous tract owned by the same person or persons.

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Section 53.130, RSMo Cum. Supp. 1955, relating to the compensation of the assessor 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."

In the recent case of State ex rel. v. Atterbury, 270 SW2d 399, the Supreme Court in considering this section held that the assessor was entitled to a fee of six cents per entry in making up the real estate book, and that such fee was not limited by the number of names in the tax books. In view of this holding, we are of the opinion that if the assessor in his discretion makes individual assessments of lots contained in a contiguous tract, and owned by the same person or persons, and actually enters such lots separately in the tax books, he would be entitled to a fee of six cents for making each entry.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that, in counties of the third and fourth class having a population of less than forty thousand inhabitants, wherein the provisions of sections 137.215 and 137.225, RSMo 1949, have not been adopted by a vote, it is discretionary with the assessor as to whether contiguous lots in one ownership are to be assessed as a unit or individually.

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We are further of the opinion that if, in the discretion of the assessor, contiguous lots in one ownership are assessed individually and so entered on the tax books, the assessor would be entitled to a fee of six cents for making each entry.

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

Very truly yours,

John M. Dalton
Attorney General

DDG/ld

enc. Opinion to:
Elton A. Skinner