

COUNTY ASSESSOR:

A person holding the office of county assessor when payments are due under Section 53.143 Mo. Supp. 1967 is entitled to such payments.

OPINION NO. 112

March 9, 1970



Honorable Ronald R. McKenzie
Prosecuting Attorney of
Marion County
B & L Building, 3rd &
Broadway
Hannibal, Missouri 63401

Dear Mr. McKenzie:

This is in response to your request for an opinion from this office as follows:

"I am sure that you are aware that Governor Hearnes has appointed James Riney, Marion County Assessor, to the position of Chairman of the Missouri State Tax Commission. I anticipate that Mr. Riney will resign on approximately January 31, 1970, from his present position as Marion County Assessor at which time he will take over his new position.

"As you know, the Assessor's salary is paid considerably different than any other office in county government. The Missouri Statutes require that the County Assessor turn over the county tax books over to the County Clerk the first day of June the current taxable year. At this time final settlement is made by the Assessor for

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salaries and expenses incurred in assessing and preparing and making the tax books during the period from June 1 to June 1.

"At the time of the resignation of Mr. Riney as County Assessor on January 31, 1970, he will have worked as County Assessor and incurred the expenses that are necessary to operate that office for the period of eight months since June 1, 1969, at no financial benefit to himself and no reimbursements for secretary and other expenses necessary to properly operate this office, with the exception of the 15% of his last year's salary from the County and the State for the month of January, 1970, as recently passed by the Legislature. This partial payment will amount to approximately \$2200.00. Mr. Riney states that his secretary alone for this 8 months period will be \$24000.00, not to mention other expenses and a reasonable salary for himself.

"Accordingly, I would appreciate your advising the undersigned what salary and what expenses such an outgoing Assessor might be entitled to for the period June 1 through December 31, 1969, from whom such payment should be forthcoming and whether to be made by the County Court or the State of Missouri, as well as any other information you may have that would help clarify this matter."

We understand the period you inquire about actually is from June 1, 1969 to January 31, 1970.

We have been informed by Mr. Riney that the only question involved in this opinion request is determining the fees he is entitled to receive from June 1969, when he made his last settlement and, until he resigned in January 1970 for the assessment lists of real and personal property and entries in the property tax books he made during this period of time. There is no question involved requiring reimbursement for mileage or any other compensation due him during this period of time.

We are enclosing herewith Opinion No. 81 issued by this office

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on April 7, 1954, holding a person appointed to fill a vacancy in the office of county assessor in a third class county, holds the office until September 1 following the general election in November, at which time a successor is elected.

Marion County is a third class county not under township organization.

Chapter 53, RSMo 1959, provides for the office of county assessor.

Section 53.010, RSMo 1959, provides for the election of a county assessor at the general election in November who shall assume the duties of office on September 1 for a term of four years.

The county assessor in the third class county is compensated for his services on a fee basis. He is not entitled to any compensation until he performs an act for which a fee is allowed by statute, and at the time and manner as provided by statute.

The general rule in regard to the compensation of public officials is stated in *Nodaway County v. Kidder*, 129 S.W.2d 857, l.c. 860 as follows:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. . . ."

In order to understand the issues involved in this matter, possibly it is best to discuss in general the duties of the assessor in a third class county.

Section 137.115, RSMo 1959, provides that the assessor and his deputies, between the first day of January and the first day of June, shall call on each person liable for assessment and, require such person to make a correct statement of all real estate and personal property owned by such person subject to tax, which list shall be delivered to the assessor. Under Section 137.155, RSMo 1959, the list and oath shall be filed by the assessor, after he has completed his assessment books, with the county clerk. Under Section 137.245, RSMo 1959, the assessor shall make out and return to the county clerk on or before the 31st day of May, the assessment books. Under

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Section 53.130, RSMo 1959, the assessor in a third class county receives 65 cents for each assessment list and 8 cents per entry he makes on real estate and tangible personal property books, one half of which is paid by the County and one half by the State. Section 53.147, Mo. Supp. 1967, provides that the county clerk not later than June the 15th of each year shall determine from the tax books and assessor's list filed in his office by the county assessor the compensation due the assessor for the work he performed while in office and certify to the county treasurer and to the State Director of Revenue, the amount due for the current 12 month period. These fees are not due and payable until June 15th of each year.

Under these statutes, the assessor in a third class county formerly was required to wait until June 15th of each year before receiving any compensation he earned in fees for the work he performed after June of the preceding year. Apparently with this in mind, the legislature enacted Section 53.143 Mo. Supp. 1967.

Section 53.143, Mo. Supp. 1967, provides:

"1. Every county assessor in a third class county, except counties having township organization, shall receive his compensation for the twelve month period beginning September first and ending August thirty-first, in the following manner: On the last day of January and on the last day of each of the next consecutive four months he shall receive from the county and from the state, a sum equal to fifteen per cent of the amount due from each of them to the assessor of that county in the preceding twelve month period. As soon as practical thereafter, he shall receive an amount from the county and from the state which, when added to the amounts received in the preceding five payments from each of them, will result in his having received the total compensation due him for the twelve month period.

"2. Any assessor who receives an amount greater than the total amount to which he is entitled for the twelve month period because of the operation of subsection 1 shall immediately reimburse the state treasurer and the

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treasurer of his county for any overpayment and shall be liable personally and on his bond for any overpayment received by him."

Under this statute, the assessor in a third class county is entitled to receive 15% of the amount previously paid the county assessor for the preceding year, payments to be made January 31 and on the last day of each the next succeeding four months. This is the method to be used in estimating the fees to be earned during the current year.

This statute provides for making payments of compensation to the assessor prior to the final settlement. The amount of each payment is not based upon the amount he has earned in fees, up to the time of payment, but the amount paid the assessor in fees during the preceding term is used as the basis for estimating the compensation to be paid in advance of his final settlement. Absent this statute, the assessor would not be entitled to any compensation until final settlement is made in June, at which time he would receive all the compensation he earned in fees from September 1 to August 31. Under this statute, however, when final settlement is made, an adjustment is to be made in the amount of compensation that the assessor is entitled to receive and if the payments advanced are in excess of the amount he has earned in fees, the excess must be refunded and if he earned more than was advanced, he is entitled to the additional compensation. The amount would be governed by the fees he earned for the work he performed while in office. If more than one person has held the office during the current term, the amount of compensation each would be entitled to receive would depend upon the fees he earned for the work he performed while in office.

It is our view that advanced payments made under Section 53.143, supra, are made to the person holding the office of assessor on the date these payments become due and the actual amount of compensation which each assessor is entitled to receive is to be determined on the final settlement in June.

CONCLUSION

It is the opinion of this office that:

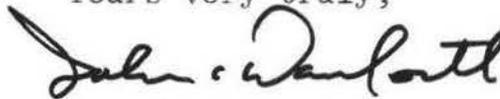
1. When an assessor, in a third class county, resigns his office, he is entitled to the fees he earned in making the assessment lists and entries in the property tax books while holding the office, the payments to be made by the county and state when settlement is made in June, one half to be paid by the county and one half by the state.

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2. The payments to be made as provided under Section 53.143, *supra*, of 15% of the amount due the assessor in the preceding 12 month period on January 31 and the last day of the next four months are to be made to the persons holding the office on the date they become due as provided in the statute.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 81
4-7-54, Settle