

TAXATION: County court has no authority to change the  
COUNTY COURT: valuation of property returned by assessor.  
COUNTY BUDGET: County court may apportion class four demands of  
the budget if there is not sufficient revenue to  
pay all such demands.

July 15, 1947

FILED

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*Copied  
7/23*

Honorable Joe W. Collins  
Prosecuting Attorney  
Cedar County  
Stockton, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an official opinion from this department on the following statement of facts:

"This month the Cedar County Assessor turned in his books to the County Clerk. The County Clerk made an abstract of his records and mailed them in to the Tax Commission. The County Court would like to know if it is its duty to approve or disapprove the books or if it has any duty to perform in regard thereto.

"The assessments were not high enough to raise the revenue anticipated by the County Court in making its budget. The County Court thinks the tangible personal property is assessed too low and would like to know how to get it raised.

"If the taxes are not raised to meet the needs of the County as anticipated, the County Court would also like to know if it should revise its budget as there would not be enough money to pay County officials in full."

The first part of your request goes to the authority of the county court to approve or disapprove the tax books of the county assessor when he returns such books to that body.

Under Section 7 of Article VI of the Constitution of Missouri, 1945, it is the duty of the county court to manage all county business as prescribed by law. Since the duties of the county court are only those which are prescribed by statute, we must refer to the statutes for the answer to your

question. In the case of Lancaster vs. County of Atchison, 180 S.W. (2d) 706, the court, in referring to the foregoing principle, said at l.c. 708:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void." \* \* \*

Referring to the statutes to ascertain the duties of the county court in respect in approving or disapproving the tax books of the assessor, we find that Section 39, Laws of Missouri 1945, page 1796, reads as follows:

"The assessor, except in St. Louis City, shall make out and return to the county court, on or before the 31st day of May in every year, a fair copy of the assessor's book, verified by his affidavit annexed thereto, in the following words, to wit:

". . . . ., being duly sworn, makes oath and says that he has made diligent efforts to ascertain all the taxable property being or situate, on the first day of January last past, in the county of which he is assessor; 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.

"The clerk of the county court shall immediately make out an abstract of the assessment book, showing aggregate footings of the different columns, so as to set forth the aggregate amounts of the different kinds of real and tangible personal property and the valuation thereof, and forward the same to the State Tax Commission. Upon failure to make out and forward such abstract to the State Tax Commission on or before the twentieth day of June, the clerk shall, upon conviction be deemed guilty of a misdemeanor."

From an examination of this section, it will be seen that the county court has nothing to do but accept the books of the assessor when they are returned by that officer. The court neither approves or disapproves these books. When the books are returned to the county court, this section requires the clerk to make out the abstract of the books and forward it to the State Tax Commission. Section 11003, Laws of Missouri 1945, page 1776, authorizes county boards of equalization to "raise the valuation of all tracts or parcels of land and all tangible personal property as in their opinion have been returned below their real value." However, the value of a class of property may not be reduced or increased below or above that fixed by the State Tax Commission. Trust Co. vs. Schramm, 269 Mo. 489. As provided for in said Section 39, hereinbefore quoted, the county clerk forwards the abstract of the assessment book to the State Tax Commission. The State Tax Commission was set up and created by H.C.S.H.B. No. 528 of the 63rd General Assembly, Laws of Missouri 1945. Under Section 15 of this act, Laws of Missouri 1945, page 1810, the Tax Commission equalizes real and tangible property among the several counties in the state. Under the first subdivision of this section, it is provided that "it shall add to the valuation of each class of the property, real or tangible 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." The Tax Commission, under this act, seems to have general supervision over taxing officers and over the assessment of taxes. Sub-section 9 of said Section 15, Laws of Missouri 1945, page 1813, provides as follows:

"At least one member of the Commission, or some duly authorized representative, shall officially visit the several counties of this State at least once in two years and inquire into the methods of assessment and taxation and ascertain whether assessing and revenue officers are faithfully discharging their duties as required by law and are diligent in enforcing the laws pertaining to the general property tax."

From an examination of the various statutes relating to the assessment and collection of taxes, we fail to find where the county court has any authority to approve or disapprove the assessment books or assessments made by the county assessor. Since there is no such authority conferred on the county court by statute, then applying the rule announced in the

Lancaster case, supra, that body would have no authority to approve or disapprove the books of the county assessor or to raise or lower the valuations placed on property by that officer.

Again referring to the State Tax Commission act, it would seem that that body would be the one to which the county court should petition for raising the assessment of all the property of a class in the county. The Tax Commission, under the first sub-section of Section 15, supra, would have authority to make such a raise if the facts justified it.

On your last question, you suggest that if the taxes are not raised to meet the anticipated demands of the county that the court would like to know if it would be authorized to revise its budget so that there would be enough money to pay county officials in full.

We refer you to the county budget law, Article 11, Chapter 73, R. S. Mo. 1939, together with the amendments thereto, made in Laws of Missouri 1941, page 650. Referring to the budget act, it will be noted that the General Assembly has provided that claims against the county be classified in six different classes. It further appears from this act that all the claims in a class shall be paid before claims in the next class below it are paid. In other words, moneys must be apportioned and set apart, sufficient for the payment of class one claims before provisions are made for the payment of class two claims. This same principle applies to all of the classes of demands.

From an examination of Section 10912 of the budget act, it appears that the lawmakers contemplated such a contingency as has occurred in your county with respect to the payment of the salaries of officers. The portion of this section applicable to such a contingency reads as follows:

"\* \* \* If for any year there should not be sufficient funds for the county court to pay all the approved estimates under class 4, after having provided for the prior classes, the county court shall apportion and appropriate to each office the available funds on hand and anticipated, in the proportion that the approved estimate of each office bears to the total approved estimate for class 4."

This provision in said Section 10912 is a case in which the county budget may be revised. Under these circumstances, a county court is required to pay class one and two claims out of county revenue, class three claims out of road funds, and then officers' salaries are paid out of class four. Of course, if there is not enough revenue available to pay any of class four claims, there is no statutory authority for paying the officers. If, however, there is some revenue to pay class four demands but not enough to pay them in full, then under the provisions of Section 10912, supra, the amount of funds available is apportioned to the officers in proportion to the amount budgeted to that office.

#### CONCLUSION

Therefore, it is the opinion of this department that the county court does not have any duty or authority to approve or disapprove the tax books when the assessor returns them to that body.

It is further the opinion of this department that the county court does not have any authority to lower or raise any valuations returned by the assessor but that that body would have authority to request the State Tax Commission to adjust the assessments so that the property in said county is assessed at its true value.

We are further of the opinion that if the revenue of the county is not sufficient to pay class four demands that the county court may apportion and appropriate to each office the available funds on hand and anticipated for that class of demands in the proportion that the approved estimate of each office bears to the total approved estimate for class four demands.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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