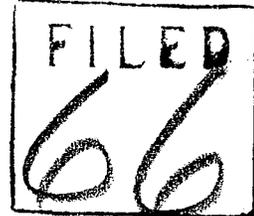


ASSESSORS: The provisions of Section 53.140, RSMo Cum. Supp.,
COUNTY ASSESSOR: 1957, would not prohibit the compensation of clerical
COUNTY COURT: or stenographic assistants within the limits
of 53.095, RSMo Cum. Supp. for making entries in
the real and tangible personal assessment books.

June 2, 1959



Honorable Ralph B. Nevins
Prosecuting Attorney
Hickory County
Hermitage, Missouri

Dear Sir:

Reference is made to your request for an official opinion
which request reads as follows:

"I would appreciate an opinion on the following
questions:

"Is the Clerical or stenographic assistants to
the County Assessor in Class Four counties entitled
to receive the compensation provided for in Sec-
tion 53:095 for performing work for which specific
compensation is allowed the assessor under Section
53:140?"

"Is the County Assessor the sole judge of of
whether work performed under the provisions of
Section 53:095 is necessary for the efficient per-
formance of the duties of his office, even though
it includes the work of making the personal and
real estate tax books?"

Your inquiry involves an interpretation of Sections 53.095
and 53.140, RSMo Cum. Supp., 1957. Said Sections read as follows:

"53.095. The county assessor in each county of
classes three and four may appoint and fix the
compensation of such clerical or stenographic
assistants as may be necessary for the efficient
performance of the duties of his office. The
compensation of such clerical or stenographic as-
sistants shall be paid from the county treasury
and shall not exceed six hundred dollars per annum
in counties of class three nor six hundred dollars
per annum in counties of class four."

Honorable Ralph B. Nevins

"53.140. The compensation of the county assessor in counties of the fourth class shall be sixty-five cents per list, and each county assessor shall be allowed a fee of eight 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. Nothing contained in this section is so construed as to allow any pay per name for the names set opposite each tract of land assessed in the numerical list."

Section 53.095 authorizes and empowers the county assessor in counties of the third and fourth class to appoint and fix the compensation of such clerical or stenographic assistants as may be necessary for the efficient performance of the duties of the office. Your inquiry first asks whether duly appointed clerical or stenographic assistants are entitled to compensation for performing work for which specific compensation is allowed the assessor under Section 53.140, supra. From information submitted in connection with your opinion request, we understand that the work to which you refer is the actual physical act of making entries in the real and tangible personal property tax books.

Section 53.140 provides for the allowance to the assessor of a fee of eight cents per entry for making the real estate and tangible personal assessment books. However, for the reasons hereinafter stated we believe that this Section would not prohibit the allowance of compensation to clerical or stenographic assistants for actually making the entries in the tax books.

The actual physical act of making the above referred to entries in the tax books is not an act requiring the exercise of personal discretion or judgment. On the other hand, it is a mere ministerial act which does not require the exercise of discretion. It has been held that under certain circumstances a mere ministerial act not requiring the exercise of discretion may be delegated. See *State ex rel vs. Reber*, 226 Mo. 229.

Further, it is generally stated that a ministerial act done in the presence and under the authority and direction of an officer duly authorized to perform the act is the act of the officer himself. 67 C.J.S. Officers, Section 152, page 451. Also, in regard to the authority of a county officer to discharge the duties and responsibilities of his office through employees and assistants, see *State ex. inf. vs. Cumpston*, 240 S.W.2d 877.

Honorable Ralph B. Nevins

We conclude that the actual manual physical work of making the entries in the tax book is an act which can lawfully be performed by duly authorized stenographic or clerical assistants and is not a duty which can only be performed by the assessor.

In view of the fact that the making of such entries is a duty which can be performed by clerical or stenographic assistants, we are of the opinion that it would be proper to pay such clerical and stenographic assistants for performing such duties within the limits authorized by Section 53.095 supra, notwithstanding the fact that the assessor is allowed a fee for making such entries by virtue of the provisions of Section 53.140.

As we view the provisions of Section 53.140, it is merely a means by which the Legislature has geared the remuneration of the assessor to the actual responsibilities of the office and does not have within its meaning any prohibition express or implied against the payment of clerical or stenographic assistants for performing the manual physical work connected with the above referred to duties. It is to be borne in mind that while the manual physical work involved in connection with these duties may be performed by clerical or stenographic assistants, the responsibility, supervision, management and control rest with the officeholder.

In regard to question number two, we are enclosing herewith an opinion of this office to Joe Collins, Prosecuting Attorney of Cedar County under date of December 31, 1951, holding that the county assessor who is vested with the sole power to make the appointment would also make the determination of the necessity for stenographic or clerical assistance.

CONCLUSION

Therefore, it is the opinion of this office that the provisions of Section 53.140, RSMo Cum. Supp., 1957, would not prohibit the compensation of clerical or stenographic assistants within the limits of 53.095, RSMo Cum. Supp. for making entries in the real and tangible personal assessment books.

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

Very truly yours,

John M. Dalton
Attorney General

DDG:lvd

Enclosure