COUNTY COURTS - Right to compromise taxes, Section 9950, R.S.Mo.1929, Rights in correcting errors, Section 9950, R. S. Mo. 1929.
Collector's liability, acting under an unauthorized order of county court.

February 15, 1933.

Senator J. C. McDowell
Missouri Senate
Jefferson City, Missouri

Dear Mr. McDowell:

Your recent letter directed to the Attorney-General has been handed the undersigned for attention. You asked an opinion of this office upon the following questions:

> "1. Section 9950 R. S. of Missouri, 1929, provides that taxes may be compromised by the county court when upon the back tax books. Under this section explain what, in your opinion, the county courts can do?
>
> 2. Under Section 9980 - county courts are given power to correct erroneous assessment of lands for taxes. What in your opinion constitutes errors that the court can correct?
>
> (a) Can the county court reduce valuations of land as an error under this section?
>
> (b) Can the county court legally, by general order take off all interest and penalties on back taxes, even though reduced to judgment?
>
> (c) Can the county court reduce attorney fees and the 4% penalty allowed the collector after the same has been entered in judgment by either compromising the amount of taxes under the judgment or by reducing the penalties?

"Section 9946 of R. S. of Missouri provides that errors in tax books may be corrected, so in your opinion does this section authorize the county court to lower values fixed by the board of equalization upon property that they now deem too highly assessed?

In your opinion would the collector be liable on his bond where he issues a receipt for taxes under an order of the county court taking off all interests and penalities upon back taxes?

Would the collector's bond be liable - where the county court reduces the valuations of lands and orders the collector to reduce the back taxes to conform with the new valuations established by the court."

Section 9950 R. S. Mo. 1929, provides that a county court may compromise delinquent taxes when the same are charged in a back-tax book and when it appears to the court that any tract of land or town lot contained in the back-tax book is not worth the amount of taxes, interest and cost due thereon as charge in said back-tax book, or if it appears to the court that the land would not sell for the amount of such taxes, interst and cost, then the county court is authorized to compromise the taxes, interest and cost. We are of the opinion that under this section the county court is authorized to compromise the back tax and the things required to be found by the court under the section are matters of fact to be ascertained and determined by that official body.

The court is required to find one of two existing or evident facts, namely, first, that the parcel of land is not worth in value the amount of accrued taxes, penalties and costs due thereon as appears from the back-tax book or, second, that the land would not sell for the amount of such taxes, interest and cost. There is no fixed rule given for the ascertainment of either of these facts. The value could be proven as value is proven in civil cases, namely, what similar lands with like improvements in the same locality were selling for at the time,

or what the same character of property had been bringing from tax sales and what the state and county had been realizing therefrom after the payment of costs in connection with the sales could be taken into consideration under the second test of value.

This section provides that when the amount of tax has been agreed upon under the compromise, the taxpayer will pay such agreed amount to the collector. The taxpayer shall thereupon receive a certificate of redemption, which, of course, is equivalent to a receipt. The amount paid by the taxpayer will be distributed by the proper officer, (who would, of course, be the collector, he having the money and the records of the funds entitled thereto), to the various funds to which said taxes are due in proportion as the amount received bears to the whole amount charged against said tract.

While this section does not specifically authorize or permit the county court to reduce the valuation, it does unquestionably permit a compromise of the tax where the facts justify it.

The presumption in law is that officers will discharge their duties honestly and fairly. If, therefore, the proper certifications of the action of the county court were made to the collector, we are of the opinion that the collector would incur no liability for the amounts the interest and cost had been diminished through the distribution of the compromise tax to these respective funds; the compromise of taxes by the county court as provided in this section having been authorized.

Section 9980, R. S. Mo. 1929, provides that,

"the several county courts are hereby authorized and empowered to hear and determine all allegations of erroneous assessments of lands for taxes and in all cases where

> it shall appear that lands have been erroneously taxed, either by having them taxed to more persons than one, or more than once for the same year to the same person, or if the land was not subject to taxation, the said court shall order the same to be corrected on the books of the proper assessor *******. County courts are hereby prohibited from making reductions in valuations placed upon real estate by the assessor *****."

It will be noted that this section provides for three instances where the county court is authorized to determine erroneous assessments, namely:

(1) By having them taxed to more persons than one;

(2) More than once for the same year to the same person;

(3) If the land was not subject to taxation.

The section specifically prohibits the court from making reductions of valuations placed upon lands by assessors, thereby restricting and in a manner defining the power intended to be given under this particular section.

Section 9808, R. S. Mo. 1929, provides,

> "The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors or defects or mistakes; and where any lot of land or any portion thereof has been erroneously assessed twice for the same year, the county court shall have the

> power and it is hereby made its duty, to release the owner or claimant thereof upon the payment of the proper taxes. Valuations placed on property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section."

It will be seen that this section specifically states that valuations as fixed by the assessors shall not be deemed erroneous assessments.

Section 9946, R. S. Mo. 1929, provides,

> "In all cases where the county court, or assessment board or any city council or assessment board, shall have assessed and levied taxes, general or special, on any real estate, according to law, whether the same be delinquent or otherwise, and until the same are paid and collected, with all costs, interests and penalties thereon, the city council of any city and the county court of any county shall have the full power to correct any errors which may appear in connection therewith, whether of valuation, subject to the provisions of the Constitution of this state, or of description, or ownership, double assessment, omission from the assessment list or books, or otherwise, and to make such valuations, assessment and levy conform in all respects to the facts and requirements of the law. Any description or designation of property for assessment purposes by which it may be identified or located shall be a sufficient and valid description or designation."

This section as originally written gave authority to cities to correct errors. In Session Act 1909, p. 725, it was amended by adding thereto county court or assessment board. The section does not undertake to repeal conflicting sections.

The term "erroneously assessed" has received judicial construction and we are of the opinion that the construction placed thereon is applicable, as the term is used in Section 9980, R. S. Mo. 1929.

In Cooley, on taxation, Vol. 3, p. 2505 and 2506, we find this declaration, based upon the cases of Clay County v. Brown Lumber Co., 119 S. W. 251, and matter of Trustees of Village of Delhi, 139 N. Y. App. Div. 412, 124 N. Y. Supp. 487,

> " The term 'erroneously assessed' as used in such a statute means an assessment illegal because of a jurisdictional defect and does not include a mere error of judgment."

In the Clay County v. Brown case, supra, in dealing with and declaring the law upon a matter in many respects similar to our proposition, the court said,

> "It is urged by the appellee that an excessive valuation of property is an erroneous assessment thereof within the meaning of section 7180 of Kirby's Digest, so that a remedy is here given to one, who has paid taxes under these circumstances, by having the taxes refunded; but we do not think that the term 'erroneously assessed", as used in said section, refers to an overvaluation of the property. The term 'erroneous assessment', as there used, refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officers in fixing the amount of the valuation of the property. If the property paid on was exempt from taxation, or if the property was not located in the county, or if the tax was invalid, or if there was any clear excess of power granted, so as to make the assessment beyond the jurisdiction of the assessing officer or board, then the provisions of

> Kirby's Dig., section 7180, give the owner a remedy for a refunding of such taxes thus erroneously paid; but a remedy is not given by this section to the party aggrieved by reason only of an excessive assessment or overvaluation of his property."

Construing Section 9946, R. S. Mo. 1929, in the light of the reasoning enunciated in the Arkansas case, the declaration of law contained in Cooley on Taxation, supra, and being unable to harmonize this section with Sections 9808 and 9880, R. S. Mo. 1929, wherein valuation is specifically mentioned as not to be taken as an erroneous assessment, we are indeed doubtful that under Section 9946, R. S. Mo. 1929, the county court would be authorized to lower the valuation fixed by the board of equalization upon property that they now deem too highly assessed and justify such action upon the theory that it is a correction of an erroneous assessment. Having reached that conclusion, it will not be necessary to take up subdivisions "(a), "(b)" and "(c)" under this query.

In answer to this inquiry,

> "In your opinion would the collector be liable on his bond where he issues a receipt for taxes under an order of the county court taking off all interest and penalties upon back taxes?";

the law does not authorize a county court to remit all taxes and penalties accrued upon back taxes. The only authority given to county courts in this respect is contained in the provisions of Section 9950, supra.

Until additional authority has been given to county courts, we are, as stated above, of the opinion that such courts cannot enter a general order remitting all accrued interest, penalties and costs upon back taxes. The collector would not be justified in receiving and acting upon such an order. His only authority for receiving a less amount than his tax book calls for is under and by reason of Section 9950, R. S. Mo. 1929. If he acted upon the general order of the county court, he undoubtedly would incur a personal

liability to the respective funds deprived of such interest, and costs that may have accrued upon the back tax.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED:_____
ROY McKITTRICK
Attorney-General.

CCA:EO