

TAXATION: County Board of Equalization must equalize assessments to reflect true values.

4.29
April 12, 1934.



Hon. James V. Conran
Prosecuting Attorney
New Madrid County
Portageville, Missouri

Dear Mr. Conran:

Acknowledgment is herewith made of your request for an opinion of this office on the following matter:

"The County Court advises me that they have received instructions from you to increase the valuation of New Madrid County real estate approximately \$900,000.

The Court is of the opinion that this increase should be placed upon the lands in the various drainage districts which secured the benefit of the new tax law exempting unpaid benefits. In some instances the compliance with said law reduced the assessed valuation of certain tracts out of all comparison with the valuation of other lands. The Court feels that the placing of the increase upon such benefited lands should be far more equitable than to make a blanket increase on all lands, including those not benefited by said law."

I.

COUNTY BOARD OF EQUALIZATION
MAY EQUALIZE VALUATION OF IN-
DIVIDUAL TRACTS.

The powers and duties of the County Board of Equalization are found in Article II of Chapter 59 R. S. No. 1929. Portions of Section 9812 read as follows:

"Said board shall have power to hear complaints and to equalize the valuation and assessments upon all real and personal property within the county which is made taxable by law, and, having each taken an oath, to be administered by the clerk, fairly and impartially to equalize the valuation of all the taxable property in such county, shall immediately proceed to equalize the valuation and assessment of all such property, both real and personal, within their counties respectively, so that each tract of land shall be entered on the tax book at its true value:
* * * * *

So as to assist the County Board of Equalization in their deliberations the Legislature has laid down rules to be observed by the Board as are found in Section 9813:

"* * * * *First, they shall raise the valuation of all such tracts or parcels of land and any personal property, such as in their opinion have been returned below their real value,* * * second, they shall reduce the valuation of such tract or parcels of land* * * which, in their opinion has been returned above its true value as compared with the average valuation of all the real * * * property of the county."

The foregoing sections clearly indicate that it is the duty of the county board of equalization to examine the assessment of the various tracts and parcels of land and to equably adjust their valuation of each tract so that each taxpayer makes his fair contribution.

Judge Ragland in the case of State ex rel. Thompson vs. Dirckx, 11 S. W. (2d) 38, stated as follows, 1. c. 41:

"* * * * *The county board's authority is limited to equalizing valuations of property within a class. If it finds one piece of property within a class overvalued, it follows as a necessary implication that the remaining property in the class, or at least some of it, is undervalued. This for the reason that the valuation of the whole as a class, is fixed by the state board and that cannot be changed. A reduction of the valuation of one or more pieces of property

therefore requires a corresponding increase of the valuation of some or all of the remaining property in the class.* * * *

As indicated by the foregoing quotation, your County Board of Equalization, when it meets on the first Monday of April is further required to conform the assessed valuation of the real property in the County with the orders of the State Board of Equalization duly made. Section 9865 provides in part as follows:

"When the state board of equalization shall have completed its labors, the state auditor shall immediately transmit to each county clerk the per centum added to or deducted from the valuation of the property of his county, specifying the percentage added to or deducted from the real property and the personal property respectively, and also the value of the real and personal property of his county as equalized by said board; and the said clerk shall furnish one copy thereof to the assessor, and one copy to be laid before the annual county board of equalization.* * * *"

Upon receipt of the information above referred to, the valuation as fixed by the county assessor or as equalized by the Board must be conformed to the requirements of the state board. See State vs. Bethards, 9 S. W. (2d) 603, l. c. 605:

"The county board of equalization, under article 3, c. 119, sec. 12821, is authorized to hear complaints and equalize valuations made by the assessor. It is nowhere authorized to increase or reduce the aggregate valuation fixed by the state board of equalization. It has no power to assess. State ex rel. v. Baker, 170 Mo. 16c. cit. 391, 70 S. W. 872. Its duty is to equalize among the separate tracts the valuations fixed by the assessor. If the county board of equalization refuses to perform its duty, as it did in this case, then the statutes clearly contemplate that the county clerk shall adjust the valuation in accordance with the orders of the state board.* * * *"

From these and other sections (Sec. 9792--providing for the assessment of all property at its true value in money at the time of the assessment) it is evident that the intent of the law is to insure an assessment of all property at its true value. Checks and balances have been provided-- the County Board of Equalization, The County Board of Appeals, The State Board of Equalization--to insure that the final assessed valuation on each piece of property shall be fairly and equably assessed.

II.

LOCATION IN DRAINAGE DISTRICT
CANNOT BE SOLE BASIS OF INCREASE
OF ASSESSMENT.

It is well established in this State that the Board acts judicially in equalizing the valuations. Railroad vs. McGuire, 49 Mo. 483. It has jurisdiction over all lands in the County and is required to make such adjustments of the valuations as may be necessary to effect the purpose of the law. Whether lands be located in drainage districts or not cannot be considered as the sole criterion for the raising or lowering of the assessment. However, if conditions exist by reason of which the valuations placed upon the land in a drainage district are below the true values, such assessments, should be equalized so that each tract will bear its fair burden of taxation. The same is true of land located elsewhere in the county. What we desire to emphasize is that each tract must be considered separately and upon its own merits, and if the valuation is high it should be reduced; if low, it should be increased.

If after equalizing the real estate in the County the total assessed valuation does not reach the figure set by the State Board of Equalization, the valuation of all tracts should be increased a uniform percentage so as to make the valuation conform to the order of the State Board of Equalization. See Black vs. McGonigle, 103 Mo. 192, 1. c. 198:

"* * *The board has jurisdiction over all the lands in the county, and generally in practice its actions will be confined to raising and decreasing the assessed value of particular parcels, so as to bring all the lands in the county to a uniform value. The law, however,

clearly contemplates that all property shall be assessed at its true value (Sec. 6711), and if, in the opinion of the board, this has not been done, then the assessment may be increased so as to comply with the spirit and intention of the law. * * * * "

A similar question to the one now presented has been determined by the Supreme Court in the case of Columbia Terminals Co. v. Koeln, 3 S.W. (2d) 1021. In this case the State Board of Equalization ordered an increase of 20% in the assessed value of all personal property in the City of St. Louis. The City Board of Equalization raised the assessed valuation of all personal property, the 20% required, except the property belonging to the estates of deceased persons and minors. The plaintiff instituted this action in equity to restrain the defendant from collecting the increase and alleged (l.c. 1024):

"* * * the action of the board of equalization of the City of St. Louis, and of the city assessor, in increasing plaintiff's assessment, was 'illegal, unconstitutional, and void', because, 'in not increasing the assessed value of the personal property, included in classes 3, 4 and 10 of the assessment list of St. Louis, belonging to the estates of deceased persons and minors, the principle of uniformity in taxation was disregarded * * * "

The court overruled other contentions of the plaintiff, but recognized the inequality of omitting the property of the estates of deceased persons and of minors, and stated (l.c. 1025):

"Upon the record before us, we must indulge the presumption of right action on the part of the city board of equalization, and assume that, at the time it recommended that the assessor comply with the order of the state board of equalization, it had completed its work of equalization and had equalized all individual assessments, including the assessments of the estates of deceased persons and minors, as by law it was required to do. If such was done, it is

evident that any method except a blanket increase in all assessments sufficient in the aggregate to meet the aggregate increase ordered by the state board of equalization would produce discrimination. Lack of uniformity appears in the case stated by appellant because the assessor, whose duty it was to adjust the assessments in conformity with the order of the state board of equalization, in applying the increase to all assessments except the assessments of estates of deceased persons and minors, adopted a rule or system which was designed to operate and did operate unequally in violation of this section of the state Constitution, as well as section 1 of the Fourteenth Amendment of the Constitution of the United States."

As it was discriminatory in the above case for the assessor to arbitrarily omit the property of the estates of deceased persons and minors from the increase, so, in the instant case, it would be arbitrary and discriminatory to place the entire increase in valuation upon land in drainage or levee districts when the sole basis for such action is the fact that the land happened to be situated in a drainage or levee district.

From your request we assume that your County Board of Equalization is still in session and has not passed finally upon the assessment as made by the County Assessor. Of course, if the Board has met and adjourned Section 9817 R. S. No. 1929, would be applicable:

"In case the report from the state board of equalization be not received at or during the session of said county board, then it shall be the duty of the county clerk to adjust the tax books according to such report when received."

It would go without saying that in this instance the County Clerk could only adjust the books by increasing all property a uniform percentage necessary to bring the total assessed valuation of real estate to the figure established by the order of the State Board of Equalization.

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CONCLUSION.

It is therefore the opinion of this office that there would be no authority to place the entire increased valuation upon lands in the various drainage districts merely because such lands were entitled to advantageous assessments by reason of the new tax law, but that the duty rests on the County Board of Equalization to see that each tract of land is assessed at its true value. After the true valuation of all tracts be established the valuation of all tracts must be proportionally increased so that the total assessed valuation of real estate conforms to the requirements of the State Board of Equalization.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

HGW:MM