

ASSESSORS - Duties; When paid; Out of What Year's Revenue Paid;
Compensation under County Budget Law.

3-5
February 23, 1934.



Hon. Joseph C. Crain
Prosecuting Attorney
Christian County
Ozark, Missouri

Dear Sir:

In reply to your request for an opinion of February 14, 1934, we are herewith listing the questions listed in your letter under the following titles:

- I Duties of the assessor.
- II When the assessor is paid.
- III Out of what fund the assessor is paid.
- IV Assessor's compensation under the County Budget Law.

The references to sections not otherwise specified herein refer to the County Budget Law, Laws 1933, p. 340-351.

I.

DUTIES OF THE ASSESSOR.

In assessing all property of a taxpayer, it is made the first duty of the assessor to call upon the taxpayer personally. Section 9756 R. S. No. 1929 provides:

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"The assessor or his deputy or deputies shall between the first days of June and January, ** proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof, in the manner following to-wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable property owned by such person, ***

In the event that the assessor, when calling upon the taxpayer, finds either that the taxpayer is, first, sick, or, second, absent, then it is made the duty of the assessor, under Section 9757 R. S. Mo. 1929, to

"leave at the office, the usual place of residence or business of such person, a written or printed notice, requiring such person to make out and leave at the place named by said assessor, on or before some convenient day named therein, not less than ten days nor more than twenty days from the date of such notice, a sworn statement of the property which he is required to list, and shall leave with such notice a printed or written blank for the statement required of such person."

If the taxpayer fails to comply with such notice and fails to turn in a sworn list of his property, then "the assessor shall make the assessment as required by this chapter".

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If the assessor fails to perform this, or any other duty enjoined upon him by law under the provisions of Section 9755 R.S. Mo. 1929, he "shall be removed from office by the County Court, who shall appoint another in his stead."

If the taxpayer fails to turn in a list of his taxable property to the assessor, Section 9760 R. S. Mo. 1929, provides:

"the assessor shall himself make out the list, on his own view, or on the best information he can obtain; and for that purpose he shall have lawful right to enter into any lands and make any examination and search which may be necessary, and may examine any person upon oath touching the same."

The above section (9760) is directory, and not mandatory, upon the assessor to make such a list. - State ex rel. v. Carr, 178 Mo. 229 (1908). The assessor may make the assessment in a lump sum instead of attempting to list the various pieces of property.

The assessor, in making out such list, should bear in mind the provisions of Section 9761, which are as follows:

"If any person, being notified as aforesaid, shall fail to deliver the required list to the assessor, the property which ought to have been listed shall be assessed at double its value; and if the assessor shall neglect or refuse so to do, he shall be liable, in each case, to a penalty of fifty dollars, to be recovered at the suit of the county, and to be paid into the county school fund."

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In order to prevent injustice to any taxpayer who has omitted to make a list, as provided by law, of his taxable property, Section 9757 provides:

"the assessor may omit assessing the penalty in case of neglect, where it is satisfied the same is unavoidable and not willful."

It is, therefore, made the duty of the assessor to assess property which taxpayers failed to list with the assessor, and in making such assessment the assessor should comply with Section 9761 and list the property assessed at double its value, unless the taxpayer who failed or omitted to list the property shall satisfy the assessor that his failure to comply with the law, in not listing his taxable property, is unavoidable and not willful. This is a matter which the assessor must pass upon, and his judgment in the matter is final. The doubling of the assessment is not made by law, but is made by the assessor. - State ex rel. v. Scullin, 266 Mo. 319, 1. c. 333 (1915).

It is, therefore, the opinion of this office that the assessor should:

1. Make a personal call upon the taxpayer.
2. If the taxpayer be sick or absent at the time of the assessor's call, then the assessor should leave written notice and a printed form for the taxpayer to list his property on.
3. The failure of the taxpayer to list his property with the assessor requires the assessor to assess the property from the best information he can obtain.
4. Such property should be listed at double its value unless the taxpayer satisfies the assessor that his non-compliance with the law was unavoidable and not willful.

II.

WHEN THE ASSESSOR IS PAID.

As we have heretofore pointed out, the assessor is given the last six months in every year in which to make and collect assessment lists. These assessment lists are only memoranda for the personal use of the assessor in making up the assessment books and are not required to be returned by the assessor to the County Court. - State ex rel. v. Carr, 178 Mo. 229, l. c. 234 (1903).

It is made the duty of the assessor, not later than January 20th of each year, under Section 9800 to,

"make out and return to the county court ** a fair copy to the assessor's book, verified by his affidavit annexed thereto, *"

Section 9800 R. S. Mo. 1929 also provides:

"And upon a failure to make such return to the court on or before the day above mentioned, the court shall deduct twenty per cent from the amount of fees allowed to such assessor."

It would, therefore, appear that the amount of fees an assessor is to receive as compensation for his services is not definitely determined by law until the assessor has made out and delivered tax books to the County Court. The compensation of assessors in all counties under 40,000 population in this state is fixed by Laws of 1931, p. 359, and provides:

"one-half of which shall be paid out of the county treasury and the other half out of the state treasury:"

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It is, therefore, the opinion of this office that the assessor cannot be paid any compensation for the discharge of his duties until he had made out and delivered to the County Court the tax books prescribed in Section 9800 R. S. No. 1929.

III.

OUT OF WHAT FUND THE ASSESSOR IS PAID.

From the standpoint of the county's liability, the payment to the assessor of one-half of his compensation by the county "out of the county treasury" can mean only one thing, namely, that the assessor is to be paid out of the general revenue of the county. When the assessor delivers the tax books to the County Court he has completed his work, and his fees then become due and payable. It therefore appears that the assessor's compensation is to be paid from the revenue of the county for the year in which he is required to turn over and deliver the tax books to the County Court. If the assessor turned over the tax books to the County Court in January of 1934, then his compensation is to be paid as other salaries and fees accruing to county officers in the year 1934.

IV.

ASSESSOR'S COMPENSATION UNDER THE COUNTY BUDGET LAW.

Class 4 of the Budget Act provides:

"The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue

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of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six."

It may be urged that since the assessor is paid fees, and Class 4 of the County Budget Law refers only to salaries, that the assessor would not be entitled to compensation under Class 4 of the Budget Act. If this construction be followed, then the County Budget Act would make no provision for the compensation of assessors, because nowhere do we find reference made to the term "fees".

The Supreme Court of Missouri, in State ex rel. v. Riedel, 46 S. W. (2d) 151 l. c. 133 (1932), speaking of the general term "fees", said:

"The word "fees," if used in its narrow distinctive sense, signifies the compensation for particular acts or services rendered by county officers in the line of their duties, to be paid by the individuals obtaining the benefit of the acts, or receiving the services, or at whose instance they were performed. But a glance at the statutes in force at the time (Wagner's Statutes 1872), will show that in the main only state officers then received salaries within the strict meaning of that term. Practically all county officers (with whom alone the constitutional provision was dealing) were compensated by fees, but, when a limit was placed on the amount of fees an officer might retain, that maximum was re-

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gerded as his salary, and therefore, in a generic sense, the word "fees" implied compensation or salary, since it was the source of these. In a case involving questions of this nature decided in 1893, it was held the word "fees" in its more comprehensive signification meant compensation, Callaway County v. Henderson, 119 Mo. 32, 39, 24 S. W. 437, 439; and there is authority for that view from other jurisdictions, 3 Words And Phrases, First Series, 2713; 2 Words And Phrases, Second Series, 478. In a number of cases in recent years this court has assumed, and therefore by implication held, that the constitutional provision comprehends the salaries of county officers."

The assessor is required by Section 3 of the County Budget Act to furnish to the County Clerk on or before the 15th day of January of each year an itemized statement of the estimated amount required for the payment of all salaries or other expenses for the current year.

It therefore appears that the assessor, on or before January 15th of each year, knows what his compensation will be for the tax books which he is required to deliver on or before January 20th of that year, and this amount of compensation should be included in the county budget. In the long run, it is immaterial whether the assessor is to be paid out of one year or another, since the early comers and the first reciprocants of county warrants obtain no preference or priority over other county officers in payment of their salaries. Section 3 of the Budget Act provides:

"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

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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."

If the assessor's claims, under Class 4, constitute, for example, ten per cent of the total budget allowed under Class 4, then the assessor is only entitled to receive ten per cent of whatever amounts are available for distribution in Class 4 in the event there are insufficient funds to pay all of Class 4 in full.

It is, therefore, the opinion of this office that the compensation of the assessor for assessments made in 1933 for the current year 1934 are to be paid as other county officers compensation are paid from Class 4 of the 1934 revenue.

Respectfully submitted,

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