

TAXATION: County Court may change valuation after tax is delinquent.

November 24, 1934.

Hon. Walter H. Miller
County Assessor
County Court House
Kansas City, Missouri



Dear Mr. Miller:

Acknowledgment is made of your request for an opinion of this office of recent date wherein you inquire as follows:

"I beg leave to ask your opinion and ruling upon the following question:

Section 9946 of the Revised Statutes of Missouri, 1929, until amended as hereinafter stated, read as follows:

'Sec. 9946. ERRORS IN TAX BOOKS MAY BE CORRECTED WHEN.- In all cases where the county court, or assessment board, shall have assessed and levied taxed, 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, interest and penalties thereon, the city council of any city and the county court of any county shall have full power to correct any errors which may appear in connection therewith, whether of valuation, subject to provisions of the Constitution of this state, or of description, or ownership, double assessment, omission from the assessment list or books, or otherwise, and 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 was amended at the regular session of the Legislature, 1933, by Senate Bill 93, to read as follows:

'Section 1. AMENDING SECTION 9946, ARTICLE 9, CHAPTER 59. - That Section 9946 of Article 9 of

Chapter 59, of the Revised Statutes of Missouri, 1929, entitled 'delinquent back taxes' be and the same is hereby amended by inserting between the word 'where' and the word 'the' in line three of said section 9946 the following words 'any assessor or assessors' so that said section, as amended, shall read as follows:

'Sec. 9946. SHALL CORRECT ERRORS. - In all cases where any assessor or assessors, 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, interest and penalties thereon, the city council of any city and the county court of any county shall have 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.'

Many taxpayers of Jackson County have filed complaints with me as assessor concerning current and past valuations placed on real estate. It is contended by these taxpayers that the addition of the words, 'any assessor or assessors' gives full authority to the county court to correct any errors which may appear in connection with assessments, including errors made by the 'assessor or assessors', whether of valuation or otherwise, as provided for in said section 9946.

That is, these taxpayers contend that at any time before the taxes in question are paid and collected, the county court has full power to review not only its own acts but the acts of the 'assessor or assessors' in fixing assessments and that this necessarily includes any mistake which may be made by the assessor as to the valuation of property and

is not confined to mistakes in description or similar mistakes.

As this question arises frequently in the conduct of the affairs of this office, I will appreciate it if you will give me your opinion and ruling as soon as may be consistent, to the end that I may determine the proper course to follow."

Under the provisions of Section 11274 R. S. Mo. 1929, official opinions of this office are to be given at the request of certain state officials and the circuit or prosecuting attorneys of the various counties. This section reads as follows:

"When required, he shall give his opinion, in writing, without fee, to the general assembly, or to either house, and to the governor, secretary of state, auditor, treasurer, superintendent of public schools, warehouse commissioner, superintendent of insurance, the state finance commissioner, and the head of any state department, or any circuit or prosecuting attorney upon any question of law relative to their respective offices or the discharge of their duties."

However, we desire to be as helpful to the various county officials as conditions will permit and we are glad to herewith transmit to you our views on this problem,

Section 9946, R. S. Mo. 1929, as amended Laws 1933, page 424, provides as follows:

"Sec. 9946. Shall Correct Errors.--In all cases where any assessor or assessors, 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, interest 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."

The sole 1933 amendment was the insertion of the words "any assessor or assessors" between the words "where" and "the" in line 3 of said section.

The above quoted section gives full power to the county court to review, at any time before the taxes in question are collected or paid, not only its own acts but also the acts of the "assessor or assessors" in fixing assessments, and that this necessarily includes any errors which may be made by the assessor as to valuation of property, whether of over-valuation or under-valuation.

The 1933 legislature, feeling that such section as it then stood was possible ambiguous, sought to remedy the ambiguity by the addition of the words "any assessor or assessors", to the end that taxpayers might be more fully apprised of this alternative remedy.

Since, as we have stated, there are no Missouri cases construing Section 9946, we believe that the case of State of Missouri ex rel. Brewer v. Federal Lead Company, 265 Fed. 305 should have a strong persuasive effect. The opinion in that case was written by Judge Faris, a former member of the Supreme Court of Missouri, then sitting as District Judge for the Eastern District of Missouri. In referring to Section 11492, Revised Statutes of Missouri, 1909, which section, with the exception of the 1933 amendment, is the same section as Section 9946 above quoted, Judge Faris at page 310 stated as follows:

"There is a statute, however, which confers on the county courts of the several counties of Missouri plenary authority to either raise or lower assessed valuations on property, which lowering of valuation will have the inevitable effect to lower the amount of taxes due thereon. This section reads as follows:

'Sec. 11492. Errors in tax books may be corrected, when. -- 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, interest 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.'

It will be noted that the section of the Missouri statutes above quoted confers authority upon the several county courts to raise or lower valuations and to correct errors 'subject to the provisions of the Constitution of the state.' Without going into other of the exceptions and limitations of the Missouri statutes touching matters not here relevant, it seems obvious that the power conferred on the several county courts by the section of the statutes, supra, is derived from Sec. 36 of Art. 6 of the Constitution of Missouri, which, so far as pertinent, reads thus:

'In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law.'

It is also obvious that the above constitutional provision, in conferring upon the county courts of the several counties power to transact 'all county business', has the effect of making such county courts the general agents of the counties. If this view is correct, it is clear that the above statute and the constitutional provision above quoted have a very important bearing on the issues presented in this case. For, absent some statutory inhibition, and I know of none, and subject to some provisions of the Constitution of Missouri not here relevant, the county courts are authorized to deal with all county business just as any other general agent of any individual principal might do. "

In addition, there is dictum which sheds some light on our problem in the case of State ex rel. Teare vs. Dungan, 265 Mo. 353. In that case, the court, after having set out the 1909 section, stated at page 373 as follows:

"If an improper valuation of defendants lands was considered in determining the rate of taxation provided in section 9280, Revised Statutes of 1899 (Sec.11420, R.S.1909), defendant should have applied to the county court as provided by law, and sought to have that tribunal correct the error, if one was made."

② (Section 9808, R. S. Mo. 1929, provides as follows:

"Sec.9808. County Court to Remedy Erroneous Assessments. -- 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 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 the property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section."

It will be noticed that Section 9808 above quoted is relatively similar to Section 9946, with the exception of the last sentence of Section 9808 which we have underlined above. It seems obvious that the Legislature therefore, in omitting said sentence from Section 9946, intended Section 9808 to apply to mere clerical errors, while it intended Section 9946 to apply not only to clerical errors but also to errors of valuation with regard to the amount fixed by the assessing authority. In fact this is the only way the two sections can be reconciled without regarding one as mere surplusage, since, with the exception of the sentence above referred to, they provide substantially and in effect the same thing. It is a well recognized principal of statutory construction that in construing statutes, effect must, if possible, be given to every word, clause, sentence, paragraph and section of statute so that no part will be inoperative, superfluous or conflicting. (Dean v. Dawes (Mo. Sup.) 14 S. W. (2d) 990). Furthermore,

Section 9808 appears in its identical form as Section 9197, Revised Statutes of Missouri, 1899, while 9946, then being Section 9317, R.S. Mo. 1899, applied at that time only to cities. This latter section was extended to apply to counties by an amendment in Laws 1909, page 725, the section then appearing in its present form with the exception of the 1933 amendment. We find, then, that Section 9946 in its present form was enacted subsequent to Section 9808, hence the well recognized principles of statutory construction lead us to the inevitable conclusion first, that the legislature purposely omitted the sentence in question for reasons stated above, and second, that should we assume any conflict in the sections the one subsequently enacted should prevail.) We do not, however, feel that such conflict exists, being rather of the opinion that section 9946 was enacted to give the taxpayer an additional remedy as well as to grant to the county court definite supervisory powers in accordance with the constitutional provision referred to in the opinion of Judge Paris, quoted supra.

Let us consider briefly now what possible remedies are open to the taxpayer should he consider the assessment on his property too high and seek redress. The county board of equalization has power to hear complaints and equalize valuations, but it has no power to assess. (State ex rel. v. Bethards, 9 S. W. (2d) 803). The county board's authority is limited to equalizing valuations of property within a class, and in so doing it can neither raise nor lower the aggregate valuation of a class as a whole. (State ex rel. v. Dircke, 11 S. W. (2d) 38.) The power of the state board of equalization is limited to the equalization of the valuation of each class as a whole among the respective counties of the state, said board having no power to raise or lower the valuations of specific properties within a class. (First Trust Co. vs. Wells, 23 S. W. (2d) 109). Section 9834, subsection 8, Revised Statutes of Missouri, 1929, however, gives to the state tax commission power to raise or lower assessed valuations on complaint of any individual, co-partnership, company, association or corporation, as provided in Section 9855, Revised Statutes of Missouri, 1929. This latter section provides that complaint must be made by the taxpayer after the various assessment rolls shall have been passed upon by the various boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection.

The additional or alternative remedy which the taxpayer has in an application to the county court under Section 9946, as stated earlier in this opinion.

This latter remedy is available to the taxpayer whether the taxes are delinquent or otherwise and until said taxes are paid and collected. This remedy, for instance, would be the only one available to a taxpayer who through mistake or otherwise did not realize the overvaluation until after the taxes on the property in question were due and collectable. The opportunity of appearing before the state tax commission would, as a matter of law, be closed to him in such event. Section 9946, therefore, protects the rights of the

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taxpayer and fulfills public need. In addition the effect of the law is, by the same token, to protect the county to the fullest extent in case of an under-valuation.

(In concluding, we call your attention to the actual wording of Section 9946, i. e. "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, etc." The section did not say that power was given to correct any errors of valuation which might appear on the books, but gave power to correct any errors "of valuation." Clearly the words "of valuation" were used by the legislature in the abstract and full sense. Had the legislature intended to refer merely to clerical errors it would clearly have employed other wording.) The provisions of the Constitution referred to, if any particular ones were intended, were doubtless Section 36, Article 6 as quoted supra in the opinion by Judge Paris, and Section 4, Article 10, which provides in part that all property subject to taxation shall be taxed in proportion to its value.

For the reasons above stated, we are of the opinion that Section 9946, quoted supra, provides an alternative method of review for the protection both of the taxpayer as well as the state and county.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney General

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