

TAXATION AND REVENUE:

State Tax Commission, authority to appoint agents to investigate property omitted from assessment lists and to provide for their compensation.

February 9, 1934. 2-17-34

State Tax Commission of Missouri,
Jefferson City, Missouri.

Attention: Andy W. Wilcox, Chairman.



Gentlemen:

Under date of January 20, 1934 a request for an opinion was received from you, such request being in the following terms:

"The State Tax Commission is asking the opinion of your Department as follows:

'Can the State Tax Commission under Section 9850 R. S. 1929, employ agents on the commission basis, said agents to be paid by the different counties where the work is to be done, or can this Department pay a nominal salary and the remainder be paid by the different County Courts of the State?'

The agents contemplated in the above paragraph are to investigate omitted intangible property from the assessment list in the counties and have same properly assessed. The compensation for doing this work as stated to be paid by the different county courts except a nominal amount from the Tax Commission."

I.

PAYMENT BY STATE TAX COMMISSION

Revised Statutes Missouri 1929, Section 9850, provides as follows:

"Sec. 9850. To appoint agents, when--salary.--For the purpose of making any investigation with regard to any matters relating to the taxation of any person, firm, company, corporation, association or public utility, the commission shall have the power to appoint, by an order in writing, an agent or agents, whose duties shall be prescribed in such order. Agents may be paid a salary, fee or commission, in the discretion of the state tax commission; if a salary, the amount paid shall not exceed three hundred dollars (\$300.00) per month; if a fee or commission, the amount paid shall be in accordance with the value of the service rendered, and must be agreed upon and approved by the state tax commission before the agent renders service under his appointment. Such claims shall be paid as all other

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claims are paid by the issuing of vouchers approved by the state tax commission, which vouchers shall be filed with the state auditor and audited and paid as other claims against the state are paid. Any expenditure authorized or incurred for payment of services rendered by any agent in excess of amount appropriated for that purpose is hereby made chargeable to the state tax commission and said commission with their bondsmen shall be held liable for any such excess."

Insofar as your request deals with your power to appoint agents for the purposes described in your request the above statute clearly gives you the necessary authority. Insofar as paying such agents is concerned, these agents could be paid on a "salary, fee or commission" basis by the express authority of the statute, and by the terms of the statute such payments are to be made from state funds appropriated for that purpose, so that to the extent of the funds available to the commission broad powers are granted to it in the employment of agents, and insofar as your request pertains to the compensation of agents from state funds appropriated for the purpose, it is our opinion that express statutory authority is given to you to employ and pay agents in the manner described in your request for opinion.

II.

PAYMENT BY COUNTIES

As to the payment by counties of commissions or salary of agents appointed by the State Tax Commission under Section 9850 where such payments would be from funds collected for county or other than state purposes, the State Tax Commission could not obligate counties to make such payments. We have discovered no statutory authorization for the State Tax Commission so to obligate counties. Revised Statutes Missouri 1929, Section 9858, provides as follows:

"Sec. 9858. Commission cannot fix rate of levy.--The commission shall have no power to fix the rate of levy for the state or any political or municipal subdivision thereof; nor shall the commission have any power or authority to supervise the fixing of any tax levied or to be levied. County courts, city councils, school boards, and all other bodies legally authorized to make levies, shall be and remain free to make the rate of levy for their respective local political subdivisions or municipalities at any figure not prohibited by the Constitution or laws of the state. Regardless of any assessed valuation that may be determined upon, the power to fix the amount of taxes to be raised for all political subdivisions and municipalities for any one year shall remain in the local officers charged with the duty of fixing the rate of levy."

and to allow the State Tax Commission to reduce the amount of receipts from taxes levied by and for any of the political subdivisions referred to in Section 9858 would seem to be a violation probably of the terms and certainly

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of the spirit of section 9858. Furthermore, on common law principles the State Tax Commission, an administrative body, possessing only the powers conferred upon it by statute, could not, without the consent of a county, impose a liability upon such county. If under section 9858 the rate of levy in a certain county for county purposes were fixed, to allow the State Tax Commission to diminish the rates levied by providing that a certain percentage of the amount collected should go to an appointee or agent of the State Tax Commission, or to allow the amount of the receipts from such tax to be diminished by having a part thereof go to such appointee or agent by way of salary would be an assumption of jurisdiction by the State Tax Commission over purely local funds over which the State Tax Commission is given no jurisdiction, and the fact that such agents might discover additional property for assessment and that because of their employment the county might receive more rather than less income from taxes, would be immaterial, for no person can be subjected to an obligation to pay out his money without his consent even though there is a prospect of gain therefrom.

It is our opinion that the State Tax Commission could employ agents to investigate intangible property omitted from assessment lists in the various counties of the state, and to issue vouchers for the payment of such agents either on a commission or salary basis out of funds appropriated to the State Tax Commission, but that the State Tax Commission could not obligate any county to pay any part of the compensation of such agent without the consent of such county.

Yours very truly,

EDWARD H. MILLER

Approved:

ASSISTANT ATTORNEY GENERAL.

ATTORNEY GENERAL.