

STATE BOARD OF EQUALIZATION: Has implied powers to employ clerks necessary in the preparation of the Journal of the State Board of Equalization, assessments, examination of co. tax returns, etc.

4-9
April 3, 1934.



Honorable Andy W. Wilcox, et al,
Members State Tax Commission,
Jefferson City, Missouri.

Gentlemen:

This department acknowledges receipt of your request for an opinion, the essence of which is as follows:

"The 1933 Legislature in its appropriation, House Bill No. 643, appropriated \$682,000 to pay the State's part in assessing and collecting the revenue. The question we desire you to rule on is whether or not a certain part of this \$682,000 can be used to pay for the necessary clerical help in doing work for the State Board of Equalization, which the State Tax Commission is without funds to furnish."

We note that for a number of years, by resolution, the State Board of Equalization has been instructing the Secretary of the Board to employ certain clerks, agents and stenographers to perform such clerical research and stenographic work as may be necessary and incident to the proper performance of the statutory duties of the said Board and to incur other incidental and contingent expenses necessary to the carrying out of its duties.

We note further that the employees you desire to be paid out of the appropriation are to be employed in the preparation of the annual Journal containing the minutes of the Board. We assume this is in conformity with Section 9862, R.S. No. 1929, which is as follows:

"The board shall meet at the capitol in the City of Jefferson on the last Wednesday in February, 1894, and every year thereafter, the majority of whom shall constitute a quorum, and the members thereof shall each take an oath or affirm-

ation that he will, to the best of his knowledge and ability, equalize the valuation of real and personal property among the several counties in the state, according to the rules prescribed by this chapter for equalizing and valuing real property; and the secretary of the board shall keep an accurate account of all their proceedings and orders, and file the same, together with all their papers, in the office of the State Auditor."

House Bill No. 643, referred to in your letter, is as follows (Laws of Mo. 1933, p. 23):

"There is hereby appropriated out of the state treasury, chargeable to the state revenue fund the sum of seven hundred thousand dollars (\$700,000.00) to pay the cost of assessing and collecting of the revenue for the years 1933 and 1934 including the per diem of the members of the State Board of Equalization and the secretary and other expenses, as follows:

A. Personal Service:

To pay the per diem of the members of the State Board of Equalization.....\$10,000.00

Per diem of the Secretary..1,000.00

General expense, including communication, printing and binding.....7,000.00

To pay the state's part in assessing and collecting the revenue.....682,000.00
\$700,000.00 "

Since you desire to pay these employees under the last item of House Bill No. 643, i.e., "to pay the State's part in assessing and collecting the revenue," it is necessary for us to determine what items may be included under that item.

The Appropriation Act itself states that the amount of \$700,000.00 is to be used "to pay the cost of assessing and collecting of the revenue for the years 1933 and 1934", and then proceeds to divide this amount into four items, the first three

being definite as to the amounts and purposes thereof. The last item, "to pay the State's part in assessing and collecting the revenue" is general and might be comprehensive in its terms. Under Sec. 9839, R.S. Mo. 1929 the State Tax Commission would have the right to transfer items in one class to another class if the mode of procedure were properly followed under said section. Sec. 9839, supra, is as follows:

"It shall be unlawful for any state agency or other person to whom or for whom any appropriation was made by the general assembly to approve or pay any salaries, wages, per diem, or any bill or amount or to expend the funds so appropriated for any other purpose than that for which such appropriation was specifically made except that upon the written application of such state agency to the governor and with the written consent of the governor previously filed with the state auditor and the state treasurer any item or items of appropriations made under class 'C' of section 9835 may be transferred in whole or in part to any other item and become a part of the item to which transferred in Class 'C' as defined in said section and except also upon the written application of such state agency to the Governor and with the written consent of the Governor and filed as under class 'C' any item or items of appropriations made under class 'D' may be transferred in whole or in part to any other item of class 'D' and become part of the item to which transferred, the state auditor shall audit and the state treasurer shall pay such item or items so transferred as if it had been so appropriated originally and the state auditor and the state treasurer shall show such transfer or transfers in any annual or biennial report required by law, and to the tax commission for use in preparing the budget or other purposes, but no item appropriated under class 'A' or class 'B' or class 'E' as such classes are defined, in section 9835, shall be transferred for any purpose whatever, and no item or items appropriated under one class shall be transferred to any other class."

We find no similar section relating to the right of the State Board of Equalization to transfer funds from one item to another.

Sec. 10133, R.S. Mo. 1929 provides for the payment of assessors and collectors, and is as follows:

"Assessors and collectors shall be compensated in like manner and in like amounts as for the assessments of other taxes: Provided, that in counties in which the assessors and collectors are paid a fixed salary, that in addition to the salary paid, they shall be permitted to charge for work performed in the assessing and collecting of the income tax, as provided by this article, the same fees as are charged by assessors and collectors whose salary is not fixed by law, and which fees so charged by said assessors and collectors for services rendered in assessing and collecting income tax shall be paid by the state."

Sec. 10007, R.S. Mo. 1929, the pertinent part being paragraph VII, provides as follows:

"VII. For filing, preserving and safe-keeping of the assessment lists, one-half of one cent per list, to be paid one-half by the state and one-half by the county.

"To the collector--When the collector is required to make payment into the state treasury by any provision of this chapter at any other time than within one month after his annual settlement with the county court, he may send such moneys by express or by a draft on a national bank in St. Louis, the express charges to be paid by the state out of the appropriation for assessing and collecting the revenue."

Sec. 9877, Laws of Missouri 1933, p. 422 is as follows:

"When the books or lists for the collectors are completed, the county clerk, except in St. Louis city, shall make a complete statement of the assessment and taxes charged, on blanks and in conformity to instructions, furnished him by the state auditor. The clerk shall record said statement and forward it to said auditor. The clerks of the

county courts shall receive ten cents per hundred words and figures for all words and figures extended by him in making out the tax book, one-half thereof to be paid by the state and other half by the counties, respectively: Provided, that compensation of clerks for making out and certifying to the auditor an aggregate abstract of the tax book shall be paid by the state."

We quote the above sections for the purpose of showing the various expenditures to be made by the State Board of Equalization out of the item of \$682,000.00. You will note that the Legislature in designating the item of \$682,000.00 has not enumerated the various items and elements of expenditure which make up the State's part in collecting and assessing the taxes.

The decision in the case of Church v, Hadley, 240 Mo. 680 involves an entirely different question, but the various expenditures are specifically designated and more or less incidental in their nature and discussed under an appropriation which we believe bears indirectly on the question now under discussion. The Court said (l.c. 695-6):

"The power granted in this law is to sell bonds. The limitation of the power is that the actual sale shall not be less than par. The power of sale is granted in general terms, in so far as the means of sale is concerned. The statute granting the power does not undertake to prescribe the means and manner of sale.

"In State ex rel. v. Gates, 67 Mo. l.c. 143, Sherwood, C.J., thus announces the fixed rule in such cases: 'If there is one principle in the law which finds abundant and oft repeated recognition, it is this: that where an agent is clothed with general powers, the means and measures necessary to effectuate the powers granted, attend the grant of authority as inevitable incidents. (Edwards v. Thomas, 66 Mo. 468) Thus, an agent employed to get a bill discounted may, unless expressly restricted, indorse it in the name of his employer; a broker employed to effect a policy of insurance may adjust the loss and do all that is requisite towards such adjustment; an agent employed to

issue process may receive the debt and costs, and, in general, an agent has implied authority to use those means of which the principal could not but have foreseen the necessity, and therefore could not but have intended to authorize. (Smith, Merc. Law, 176, 175, and cases cited); and the same principle which applies to private agents is equally applicable in this regard to public ones.

* * * * *

"It will be observed that the court holds that from the express power to sell followed these implied powers, (1) to contract for printing, engraving and the like, (2) to pay counsel for an opinion on the bonds, and (3) to pay a commission to brokers for selling the bonds. It will be noticed that the latter is not emphasized in this opinion because it was not involved in that case." (l.c. 699)

CONCLUSION

From the decision and the statutes hereinabove quoted, it is the opinion of this department that the item "to pay the cost of assessing and collecting of the revenue for the years 1933 and 1934" is general in its terms, and we assume that the State Board of Equalization has implied powers to employ the necessary clerks in the preparation of the Journal of the State Board of Equalization and the preparation of assessments, examination of county tax returns, utility tax returns and any other functions which by law are imperative on the State Board of Equalization to fully and efficiently carry out its duties under the Constitution and laws of the State of Missouri.

Since you state that certain employees of the State Tax Commission are thoroughly familiar with the work enumerated above, and for that reason are more competent than employees which might be secured elsewhere, and in view of the fact that you desire these employees to perform this work, we would suggest that if an appropriate resolution be passed by the State Board of Equalization, these employees could be transferred from the payroll of the State Tax Commission to the payroll of the State Board of Equalization until such time as the work is completed.

Respectfully submitted,

APPROVED:

Attorney General

OLLIVER W. NOLEN,
Assistant Attorney General