

TAXATION: Assessor only entitled to change his assessment list of ownership to the extent that the "land list" kept by the recorder shows the change. He may not substitute other names, although they be owners, if the same are not shown on the recorder's "land list".

411-13
November 9, 1935.



Honorable B. L. Huston,
County Assessor,
Saline County,
Marshall, Missouri.

Dear Sir:

We are in receipt of your inquiry which is as follows:

"I would appreciate your opinion in regard to a matter of importance to my office which is as follows:

"Is it illegal for me to change the name of a real-estate transfer from one person to the present owner after the first named person has turned in an assessment list which bears all property owned the first day of June and including said property in question on his list?

"If I can legally make a change on the real estate book after I am certain that the ownership of this property has changed, by writing in the name of the present owner on said real estate book over the past owners name, then my books will be more correct and will facilitate the work for all offices so concerned.

"As you probably know, we assess this year for next years tax collections and therefore the real-estate changes that will happen in the meantime will be several and if I can legally change my

real-estate book to conform to said changes as they transpire, it will keep my tax records up to date and of course more nearly correct."

Section 9780, R. S. No. 1929, in part provides:

" * * * and all lands that can be described by numerical order, shall be placed in the 'land list', with the owner's name, if known, and if not, then the name of the original patentee, grantee or purchaser from the federal government, the state or county, as the case may be, opposite thereto."

Section 9782, in part, provides:

"The 'real estate book' shall contain all lands subject to assessment. It shall be in tabular form, with suitable captions and separate columns. The first column shall contain the name of the owner or owners, if known; if not, the name of the party who paid the last tax; if no tax has ever been paid, then the name of the original patentee, grantee or purchaser from the federal government, the state or county, as the case may be, opposite thereto; the second column shall contain the residence of the owner;" the third column shall contain a description of the land, and the fourth column shall contain the actual cash valuation.

Said section further provides that when any person shall be the owner or original purchaser of land, the same shall be assessed as one tract, and that

"The assessor shall arrange, collect and list all lands owned by one person in the county, under his name and on the same page, if there be room to contain it, and if not, on the next and following leaf,"

and also provides that the assessor shall consolidate all lands owned by one person in a square or block into one tract, lot, or call, and provides that

"At the close of each of the owners' lists, the assessor shall place all the lands that appear to belong to the said owner, which cannot be properly described by numerical order, as contemplated in this section, which shall be otherwise properly described, indicating the quantity and location thereof. It shall be the further duty of the assessor, each year, in compiling the book provided for above, to procure the descriptions of the land and the names of the owners from the book known as and denominated 'the land list,' kept by the recorder as provided for in this chapter, carefully noting and accurately entering in their proper places all changes that may have occurred, either in the names of owners or descriptions of land since the last 'real estate book' was compiled. This shall be done each time the 'real estate book' is compiled."

Section 9784, providing that the "land list" be kept by the county recorder, among other things, provides:

"The recorder shall, whenever any deed conveying the title to real estate in the county is left with him for record, before recording the same, enter in the blank space in the 'land list,' opposite and next to the description of the land so conveyed, the name of the purchaser and date of purchase, and if there be any change in the description of the land from that already entered in the 'land list,' he shall also note that variance by stating what part or parcel of the original has been so conveyed."

This section also provides that for failure to comply with its requirements in so doing, the recorder shall be liable on his bond for not less than \$25.00 or more than \$100.00 for each neglect to enter said transfers, and provides that if, in making up the "real estate book", the assessor finds that the recorder has failed to do the things above set forth, he shall at once notify the county attorney, who shall forthwith commence suit against the recorder and his bondsmen.

Section 9791 provides that

"No assessment of property or charges for taxes thereon shall be considered illegal on account of any informality in making the assessment, or in the tax lists * * *."

Section 9793 provides that

"Each tract of land or lot shall be chargeable with its own taxes, no matter who is the owner, nor in whose name it is or was assessed. The assessment of land or lots in numerical order, or by plats and a 'land list' in alphabetical order, as provided by sections 9780 and 9781, shall be deemed and taken in all courts and places to impart notice to the owner or owners thereof, whoever or whatever they may be, that it is assessed and liable to be sold for taxes, interest and costs chargeable thereon; and no error or omission in regard to the name of any person, with reference to any tract of land or lot, shall in anywise impair the validity of the assessment thereof for taxes."

In the case of *State ex rel. McKee v. Clements*, 281 Mo. 195, discussing the question of assessments, the Supreme Court of this state said, l. c. 200:

"Read and construed together the three sections seem to mean, that land shall be assessed in the name of the owner, if known; if not, in the name of the party who paid the last

tax; if no tax has ever been paid, then in the name of the original patentee, etc., but each tract of land or lot shall be chargeable with its own taxes, no matter who is the owner, nor in whose name it is or was assessed, and no error or omission in regard to the name of any person, with reference to any tract or lot, shall in anywise impair the validity of the assessment thereof for taxes. It is said that a tax is assessed against the owner, that he and not his property pays the tax, and that the property is resorted to merely for the purpose of ascertaining the amount of the tax. (Gitchell v. Kreidler, 84 Mo. 472; State ex rel. v. Snyder, 139 Mo. 549.) Yet such tax so far as it is assessed against him on account of his ownership of real estate cannot be recovered as and for a debt owing from him in an action at law. (Carondelet v. Picot, 38 Mo. 125.) Under our system there are but two methods of collecting a real-estate tax. One is a distraint of the owner's personal property, and the other is the enforcement of a lien on the real estate on account of which the tax is assessed. It may be conceded that such a tax could not be collected by distraint of the owner's personal property, unless it was assessed against him, that is, unless the land was assessed in the owner's name, but, so far as the creation of a lien on the land is concerned, it is immaterial in whose name it is assessed. By said Section 11365 each tract of land is chargeable with its own taxes no matter who the owner is or in whose name assessed. The assessment of land or lots in numerical order, or by plats and a 'land list' in alphabetical order, as provided by preceding sections, imparts notice to the owner that it is assessed and liable to be sold for the taxes chargeable thereon. This and related

sections make the taxes a charge on the land under all circumstances, regardless of who the owner or prior lienors may be, regardless of the name or names in which it is assessed, and regardless of any error or omission in that respect."

And at page 201 the court said:

"There is no question here of the failure of the assessor to use diligence to ascertain the name of the owner at the time he made the assessment; the validity of the assessment is not dependent upon that. Whose, if any one's, dereliction caused the error or omission is wholly immaterial. The statutory corrective for the failure of the assessor to discharge his duty in carefully entering the names of the owners in the 'real estate book' is an action on his bond. * * * Defendant knew that taxes had been assessed against her lots, that they had not been paid, and that the amount thereof was easily ascertainable. She was in no respect prejudiced because they were assessed in the name of another."

It will be noted that Section 9782 places the duty upon the assessor, "each year, in compiling the book provided for above, to procure the descriptions of the land and the names of the owners from the book known as and denominated 'the land list', kept by the recorder as provided for in this chapter."

By the express statutes, as well as under the decisions of the courts, the tax on real estate becomes a lien upon that real estate regardless of whether it is assessed in the name of the record owner or some other person.

The statutes appear to contemplate that the assessor shall have charge of and make up his assessment book during the time the statutory law prescribes to the assessor for compiling his assessment book and records. The office of assessor is prescribed by the State Constitution. He has the right to place what he deems to be a fair value upon the property. He has the duty placed upon him by Section 9782 of placing in the first column on his "real estate book" the name of the owner, if known; and if not known, then the name of the party who paid the last tax, etc., as therein further provided, but the law-

November 9, 1935.

making body marked his course as to what alterations could properly be made after conveyances had been executed and recorded in the recorder's office, and that duty is to "procure the descriptions of the land and the names of the owners" from the book kept by the recorder and denominated "the land list". The Legislature in so providing has definitely outlined and marked the limit of authority of the assessor in this respect.

For the purpose of liability for the payment of real estate taxes, it is of no consequence that the first named person whom you speak of in your inquiry has turned in an assessment list which includes certain real estate owned by him at the time he turned in his assessment list, or on the first day of June, and later sold to another. If the grantee therein has had his deed recorded, then it became the duty of the recorder of the county to show that transfer in his "land list" as required by Section 9784. If he failed to do that, it would appear that he is liable on his bond for the failure, but that does not invalidate the tax, as is held in the case of *State ex rel. McKee v. Clements*, supra, but the assessor is not permitted to go to any other source than such "land list" so compiled and kept by the recorder in order to procure the correct name of the record owner of the real estate.

CONCLUSION

It is our opinion that you, as county assessor of Saline County, Missouri, have the right to substitute the name of the more recent owner of real estate, as shown by the "land list" kept by the recorder, in lieu of the name of some other person that you have theretofore indicated on your book to be the owner thereof, but that you are not permitted to go outside of or beyond said "land list" so kept by the recorder in order to change the name of the owner of real estate assessed by you.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

DW:HR