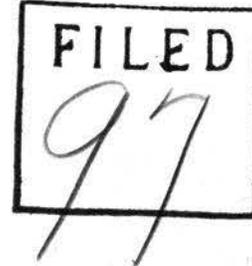


TAXATION:) Building and Loan association cannot be compelled
BUILDING & LOAN:) by county board of equalization to give list
of shareholders; shareholders must return list of
shares and actual cash value thereof; shares upon
which there is a loan need not be returned on the
assessment list.

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Honorable Andy W. Wilcox
Chairman
State Tax Commission
Jefferson City, Missouri

Dear Mr. Wilcox:

This is to acknowledge your letter as follows:

"I am enclosing you herewith a letter from the Central Savings and Loan Association of Marshall and ask that you render an opinion on the three points indicated in this letter.

"I would like to have this opinion as soon as possible as the Board of Appeals in that County will adjourn in the next few days."

The letter from the Central Savings and Loan Association, enclosed with your letter, reads in part as follows:

"We have been called upon by the Board of Equalization of this County for a list of our shareholders for the purpose of arriving at the amount of personal tax which they might owe due to their ownership of shares in this Association. There seems to be a difference of opinion among our attorneys here as to whether or not the Board of Equalization has the right to demand this list of shareholders. I wish therefore that you would let me have a written opinion upon the following three points:-

- "1st - Does the Board of Equalization have the right to demand this list of shareholders?
- "2nd - If the shareholder gives in his shares to the Assessor, is he supposed to be taxed upon the book value or the market value of these shares?
- "3rd - If the shares at par value or at matured value should equal more than the loan upon which this stock is issued, would the shareholder have to pay upon this difference, or would he have to pay upon the shares at all? In order to make this question clear, I would like to make an example, saying that the shareholder has \$1,000.00 worth of shares at par value or matured value and he has borrowed thereon \$600.00, should he be required to pay a tax upon the difference of \$400.00, or should he be required to pay any tax at all?"

I.

Does the Board of Equalization have the right to demand a list of a building and loan association's shareholders?

A building and loan association is not required by any statute to make a return to the assessor showing the shareholders and the amount of stock or shares such shareholders have in the association. Shareholders return an assessment list which discloses the number of shares or stock such own.

Section 9768, R. S. Mo. 1929, in part reads as follows:

"All parties holding stock or shares as owners or in trust in any building and

loan association in this state, on which no loan has been obtained from such association, shall be required to give a just and true list of the same to the assessor, with the actual cash value of each share on the first day of June in each year. * * * and any failure on the part of such owner, holder or depositor of such shares, shall subject such holder to the same penalties now provided for failure to give to the assessor a true list of all taxable property, verified by affidavit."

You will therefore note that the duty rests with the owner of the shares or stock to make a return to the assessor. No duty rests upon the building and loan association to return a list. The letter from the Central Savings and Loan Association states that the County Board of Equalization asked for a list of their shareholders, and the question presents itself as to whether the association has to comply with said request.

Article 3, Chapter 59, R. S. Mo. 1929, relates to "County Boards of Equalization." Section 9812 defines the powers and duties of the board, providing in part the following:

"Said board shall have power to hear complaints and to equalize the valuation and assessments upon all real and personal property within the county which is made taxable by law."

Section 9816 of said article and chapter provides that the county board may assess property omitted from the assessor's books. However, before the county board can assess property omitted from the assessor's books "it shall cause notice in writing to be served upon the owner of such property, stating the kind and class of property and the value fixed thereon by said board, and naming the time and place, not less than five days thereafter, when and where such owner may appear before said board and show cause why said assessment should not be made."

Section 9813 of said article and chapter prescribes rules to be observed by the county board of equalization, providing in part as follows:

"But, after the board shall have raised the valuation of such real estate, it shall give notice of the fact, specifying the property and the amount raised to the persons owning or controlling the same, by personal notice, through the mail or by advertisement in any paper * * *"

Section 9815 of said article and chapter gives the county board of equalization the power to subpoena persons and compel attendance. Said section reads in part as follows:

"The said board of equalization shall have power to send for persons and papers and compel the attendance of witnesses in relation to any appeal before them."

Section 9762, R. S. Mo. 1929, reads in part as follows:

"If any person shall, with intent to defraud, deliver to any assessor a false list of his property, it shall be the duty of the assessor to give notice in writing thereof to the county board of equalization; and the said board shall, on receiving such notice, give notice thereof to the person who shall have furnished such false list, which notice shall specify the particulars in which said list is alleged to be false, and shall fix a time for a hearing of the matter, * * *"

You will note from a reading of the above statutory provisions that the county board of equalization must have a specific case pending before it may compel the attendance of witnesses. In other words, if a person failed to list property the county board could make an assessment and give notice to

the party against whom the assessment was made and set the matter for hearing. At the hearing the county board could compel the attendance of any witness who would be in possession of any fact material and relevant to the matter under consideration. Also, if a person gave a false list the county board of equalization, after notice, could conduct a hearing and at that hearing could compel the attendance of any witness or the production of any books or papers material and relevant to the matter under consideration. In other words, the county board of equalization must have a definite matter before it in order to compel attendance and the production of books and papers. It does not have the right to compel the attendance of witnesses or the production of books and papers merely for the purpose of inquiry or investigation.

The Supreme Court of Missouri, en banc, in the case of *In Re Sanford*, 236 Mo. 665, said (p. 686):

"We are therefore of the opinion that there was a cause pending and on trial before the board of equalization at the time the petitioner refused to testify; but not upon an appeal within the strict legal sense of that word, but by virtue of the fact that the petitioner, under the authority of the statutes before quoted invoked the aid of the board to review and modify the false assessment, which was objected to by Hendrix."

In the *Sanford* case a taxpayer by the name of Hendrix made a return of his taxable property but on the list he showed that he had no money on hand or on deposit. The assessor made a report as required by Section 9762, R. S. Mo. 1929, that Hendrix made a false and fraudulent return. The county board of equalization met and gave notice to Hendrix to appear. Hendrix appeared and the board subpoenaed Sanford, Cashier of the Holland Banking Company, and requested the production of the books and papers of said bank relating to Hendrix' bank account. The Cashier, Sanford, refused to testify and was adjudged in contempt. Upon application by Sanford for release on a writ of habeas corpus the court denied said writ, holding that Sanford would have to testify and produce the records and books of the bank in so far as such pertained to the case before

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the Board.

In a later case, namely, Aven v. Wynes, 223 S. W. 583, Division No. 2 of the Supreme Court of Missouri granted a writ of habeas corpus, holding (p. 585):

"The Board of Equalization of Cedar County was without authority to compel the attendance of petitioner or commit him for failure to testify or produce the books of his bank. The prisoner is therefore discharged."

The facts in the above case disclosed that petitioner Aven was Cashier of the Bank and the Board ordered him to appear "and testify in a certain matter of investigation before the Board and to produce in evidence his record of time deposits of patrons of the institution of which he was Cashier." Aven appeared and refused to testify and the Board committed him for contempt. The court held that as there was no cause pending before the Board that the Board of Equalization did not have the power to compel Aven as a witness or to produce books belonging to the corporation.

Corpus Juris, Vol. 61, p. 827, has the following to say:

"Attendance of a witness under the statute can be compelled, however, only where the proceedings before the board is valid."

As heretofore pointed out, the assessment of shares or stock of a building and loan association is made in the individual's name (Section 9768, supra); the county board of equalization must give notice and have a particular cause pending before it, before it can compel the attendance of witnesses.

Therefore, it is our opinion, in answer to your first question, that the County Board of Equalization could not compel by process of law a list of shareholders of the Central Savings and Loan Association. However, it is our further opinion that if the County Board of Equalization has a cause pending, namely, the assessment of a shareholder, then the Central Savings and Loan Association would be compelled to produce its books and give testimony concerning said shareholder.

It is thus seen that there is quite a difference between the production of a list of all shareholders and the giving of testimony and production of books relating to specific instances or cases concerning shareholders. Of course, if the association voluntarily wants to give a list of the shareholders, that is a matter up to the board of directors. However, the board cannot be compelled to give the list unless there is a cause pending and on trial before the Board of Equalization.

II.

If the shareholder gives in his shares to the Assessor, is he supposed to be taxed upon the book value or the market value of these shares?

Section 9768, R. S. Mo. 1929, provides in part as follows:

"All parties holding stock or shares as owners or in trust in any building and loan association * * *, shall be required to give a just and true list of the same * * * with the actual cash value of each share * * * and the tax shall be levied upon said shares, and collected from such holder or depositor of the same, as taxes on other personal property."

There is quite a difference in some instances between the book value and the market value of shares of stock. As Section 9768, supra, uses the words "actual cash value," we are of the opinion that the cash value of the shares should be returned on the assessment list and not the book value.

III.

Are shares upon which there is a loan required to be returned for taxation?

Section 9768, supra, specifically provides that no return is necessary on shares or stock which has a loan on same. Said provision, pertinent, reads:

"On which no loan has been obtained from such association."

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As Section 9768, supra, provides that a person does not have to place on his assessment list shares of stock in a building and loan association, on which a loan has been obtained, it is our opinion that when there is a loan on shares of stock that regardless of the size or amount of the loan that such shares of stock do not have to be returned by the individual on his assessment list. We invite your attention to two cases concerning taxation of building and loan shareholders, namely, *Kansas City v. Mercantile Mutual Building and Loan Association*, 145 Mo. 50, and *State ex rel. v. Stamm*, 165 Mo. 73.

Yours very truly,

James L. HornBostal
Assistant Attorney-General

APPROVED:

(Acting) J. E. TAYLOR
Attorney-General

JLH:EG