

ASSESSORS: Compensation in counties of 40,000 or less in view of Section 9756, R.S. Missouri, 1929, as amended in Laws of 1937, page 570.

January 26, 1938

Mr. O.G. Schell
Assessor of Miller County
St. Elizabeth, Missouri



Dear Sir:

This department is in receipt of your letter of January 17, 1938, in which you request an opinion as follows:

"As Assessor of this county I am asking your opinion on several matters and hope you shall see fit to give me the desired information.

"First--

Do I get paid for one list only on resident or non-resident land owners, regardless in how many sections their land lies? Or do I have to make a separate list for each tract the owner possesses and if so, do I get the stipulated pay for each tract, provided they are in different sections.

"Second--

In the case of non-resident lists-- do I have to list all of their holdings on one list, or do I make a list for a man's holdings for each separate tract---if the latter, what do I get paid for?

"As an example for instance we have Church & Blaser, who own hundreds and hundreds of acres scattered in some 25 or possibly more sections--how many lists do I make and what am I entitled to?"

Before we can proceed to determine the compensation of an assessor in the particular examples which you have set forth, we must first determine what the compensation of an assessor is in counties not exceeding 40,000 persons in population, which includes Miller County.

Section 9806, R.S. Missouri, 1929, as amended in Laws of 1931, page 359, is in part as follows:

"The compensation of each assessor shall be thirty-five cents per list in counties having a population not exceeding forty thousand, thirty cents per list in counties having a population of more than forty thousand, and not exceeding seventy thousand, and twenty-five cents per list in counties having a population in excess of seventy thousand inhabitants, and shall be allowed a fee of three cents per entry for making real estate and personal assessment books, all the real estate and personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other half out of the state treasury: Provided, that nothing contained in this section shall be so construed as to allow any pay per name for the name set opposite each tract of land assessed in the numerical list."

A "tax list" as this term is used in Section 9806, supra, is that account of taxable property made by the owner thereof upon oath and delivered to the assessor, or prepared by the assessor in accordance with the provisions of Section 9760, R.S. Missouri, 1929, when for any cause, a list is not given the assessor. It is for taking this list that the assessor is paid.

In *State v. Gomer*, 101 S.W. 2nd 57, the Supreme Court of Missouri on November 12, 1936, rendered a decision which required a comprehensive review of the laws which fixed the

compensation of county assessors. It was held in this case "that an assessor is not required to take the list described in section 9756, R.S. 1929, from persons who own no 'taxable personal property in his county' and is, therefore, not required to make the list required by section 9760, R.S. 1929, for only real estate owned by non-residents of his county" (because their personal property is taxable elsewhere), and that not being required to take a list containing only real estate, an assessor is not "entitled to receive any compensation for making a list containing only real estate".

The effect of this case was to give to an assessor compensation for making or taking a list only when that list contained personal property.

Section 9756, R.S. Missouri, 1929, provides when and in what manner the assessor shall take "a list of taxable personal property in his county", and provides that said lists shall contain; first, a list of all the real estate and its value; second, a list of the personal property enumerated in said section and its value.

The Gomer case, supra, held that the list referred to in Section 9806, supra, did not include the list of all the real estate and its value provided for in this section, because the list of real estate was not required to be taken by Section 9756.

In Laws of 1937, page 570, Section 9756 was repealed and reenacted. Outside of some minor changes as to the items of personal property required to be listed, this new section made these changes. It provided that the assessor shall "proceed to take a list of the taxable personal property and real estate in his county", and a sentence was added to the end of the new section as follows: "The word 'list' as used in Section 9806 of the Chapter (Section 9806 fixes the assessor's compensation) shall include all the lists required under this section to be taken."

The words "and real estate", above underlined, did not appear in Section 9756 before it was amended, and we see by the addition of these words that this section now specifically requires both personal property and real

estate to be listed. The sentence added to the end of the new section specifically provides that the list mentioned in Section 9806, supra, means the lists required to be taken under Section 9756, Laws of 1937, page 570, which is a list of both personal property and real estate.

Numerous presumptions are indulged in by the courts as aids in the construction of statutes. Some of these which apply here are; that the legislature is presumed to be aware of the settled law of the state and by enacting a new law, seeks to make some change therein. *Reed v. Goldneck*, 112 Mo. App. 310. Also, that it is to be presumed that the legislature acted with full knowledge of the judicial decision under the preexisting law when passing a statute. 59 C.J. 1008; *State ex inf. v. Meeker*, 296 S.W. 411 (Mo.); *Thompson v. United States*, 246 U.S. 547, 62 L. Ed. 876.

Indulging in these presumptions here, we think the intention of the legislature in repealing and reenacting Section 9756, R.S. Missouri, 1929, in the form it now appears in Laws of 1937, page 570, was to nullify the ruling of the court in *State v. Gomer*, supra, insofar as that decision holds that an assessor is not required to make or entitled to receive compensation for taking a list containing only real estate.

✓ In *State v. Gomer*, 101 S.W. 2nd, 1.c. 66, the court drew nine conclusions concerning the duties and compensation of assessors. These conclusions concisely set out the compensation to be paid and we shall set them forth here with the exception of the third which has been completely nullified by this amendment. Also, we shall interpolate into them the changes this amendment has brought about and will omit matters required to be omitted by the new law. The interpolations will be indicated by parenthesis and underlined.

"First. That an assessor should obtain a list in the form prescribed by section 9756, R.S. 1929 (Mo. St. Ann. para. 9756, p. 7872), (as amended Laws of 1937, page 570), from every person who owns 'taxable personal property' (and real estate) in his county, (and its value).

"Second. That whenever from any cause a list of any taxable personal property (and real estate) is not delivered to him by the owner or his representative, then the assessor shall make a list thereof as required by section 9760, R.S. 1929 (Mo. St. Ann. para. 9760, p. 7877), or if the owner of such property is deceased then as required by section 9763, R.S. 1929 (Mo. St. Ann. para. 9763, p. 7879).

"Fourth. That an assessor is required to make 'Part First' of his book, denominated 'The Land List' from the list of taxable lands in his county furnished by the Secretary of State, the government maps and plats on file in his county, the last assessor's book and other information or records (see section 9797, R.S. 1929 (Mo. St. Ann. para. 9797, p. 7901); and that he shall use the information obtained from the lists taken from personal property owners and from other sources to aid him in obtaining a correct description of all tracts of land, in placing the name of the true owner opposite each tract, and in ascertaining its value.

"Fifth. That an assessor is required to make 'Part Second' of his book denominated 'Personal Property,' from the lists taken by him from property owners, or made out by him whenever, for any cause, it has not been possible to obtain from the owner a list of any taxable personal property which he has been able to locate.

"Sixth. That as compensation for making the numerical assessment in

the land list, an assessor should be paid such amount as may be allowed by the county court not to exceed the sum of 3 cents for each and every tract so assessed; but that all contiguous lots in the same square or block which can be consolidated into one tract, lot, or call shall be counted as one tract.

"Seventh. That as for compensation for taking the lists required to be delivered to him by owners of personal property (and real estate) (in counties of not more than 40,000 population) an assessor should be paid 35 cents for each list taken and should also be paid a fee of 3 cents per entry for each entry, of a property owner's name and the personal property assessed to him, in the alphabetical list in the part of his book covering personal property.

"Eighth. That an assessor is entitled to thirty-five cents per list for each list he takes which contains personal property (or real estate), whether he takes it from the owner or makes it on his own view or other information obtained as specified under section 9760 or section 9763, R.S. 1929 (Mo. St. Ann. paras. 9760, 9763, pp. 7877, 7879).

"Ninth. That the county and the state shall each pay one-half of the compensation for taking lists, and for making proper entries in both the land list and the personal property list."

In Sparks v. Clark, 57 Mo. 58, and Davidson v. Laclede Land and Development Co., 253 Mo. 223, it is said that all subdivisions of a section of land belonging to the same person should be counted as one tract although such subdivisions may not be contiguous.

Applying the foregoing to your particular examples, we conclude that an assessor is only entitled to be paid for making or taking one list of the property owned by one person, whether he be a resident or non-resident, and that this list should contain all the taxable property of that person, both real and personal. The fact that the land may lie in more than one section makes no difference in fixing the compensation of the assessor for taking or making the "tax list".

CONCLUSION

Therefore, it is the opinion of this department that the taxable property of a non-resident is to be assessed in the same manner as that of a resident. The assessor is entitled to receive thirty five cents for each list he takes. All the property, both real and personal, owned by one person in the county should be contained in one list. That as compensation for making the numerical (or alphabetical) assessment or entry of land in that part of his book denominated "land list", an assessor is entitled to receive as compensation a sum to be fixed by the county court, not to exceed three cents for each tract so assessed, and entered in the land list. But that for the purpose of determining the number of tracts for which the assessor is to be paid, all tracts of land owned by the same person in any one section of land, are to be counted as one tract. That for making the alphabetical assessment or entry of personal property in the part of his book denominated "personal property", an assessor is entitled to receive three cents for the entry of each property owner's name and all the personal property assessed to him. This fee of three cents is paid only for the entry of the name, and all the personal property and not for each item of personal property.

APPROVED by:

Respectfully submitted,

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