

ASSESSORS: May be removed by county court for failure to perform duties and a successor appointed.

September 9, 1939

Honorable Wilbert Aust
Judge of the County Court
Miller County
Tuscumbia, Missouri

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Dear Sir:

We are in receipt of your request for an opinion, dated September 6, 1939, which reads as follows:

"The County Clerk of Miller County at the proper time delivered to the assessor of this county all the necessary books, papers, and blanks for the making of all the lists and assessments of the county, including the proper blanks for the taking of the merchants lists. The County Board of Equalization for Merchants Taxes met at the appointed time and place to-wit; at the Court House on the first Monday in September of this year, for the purpose of equalizing the merchants taxes, that is the assessments. The assessor had not returned his book as required by the law and had returned no lists or any other thing from which the board could proceed to equalize the assessments. Since the first Monday in September the said Board of Equalization has adjourned from day to day in hopes that the assessor would appear with his books. The Court has had search made for the assessor but he cannot be found. The Court has been informed that the assessor is not even in the state and his wife and father are now searching for him but so far have been unable to find him.

I wish to inquire of you what steps the Court should take in this matter. Does the Court, under Sec. 9755 or any other

section of the laws of the State, have the power to remove said official from office? If so, is the removal permanent or is he removed just long enough to allow the man appointed to complete the merchant's assessment? If the Court has such power of removal who should they pay, that is should they pay the man appointed for the work or should the pay be given to the present assessor and rely on getting it back from the assessor and his sureties as provided in the above quoted section? If the Court does not have the power to remove is it your opinion that an ouster suit should be filed and if so by whom?

I appreciate that your office is busy but since we must do something within the next few days I would appreciate getting this information just as soon as is convenient."

The laws in regard to the assessment and taxation of merchants are found at page 360, Laws of Missouri, 1931, and read as follows:

"On the first Monday in June in each year it shall be the duty of each person, corporation or co-partnership or persons, as provided by this article, to furnish to the assessor of the county in which such license may have been granted, a statement of the greatest amount of goods, wares and merchandise, which he or they may have had on hand at any one time between the first Monday in March and the first Monday in June next preceding; said statement shall include goods, wares and merchandise owned by such merchant, and consigned to him or them for sale by other parties. It shall be the duty of the county assessor to enter such statements in a book to be prepared for that purpose at the expense of the county, suitably ruled, with columns for

the name of the merchant, the amount of his or their statements as returned to the assessor, the valuation of such statements as equalized by the county board of equalization, and for state, county and school taxes, and such other columns as may be found useful or convenient in practice; such book shall be verified by the affidavit of the assessor, annexed thereto, in the following words, to-wit: '..... being duly sworn, makes oath and says that he has made diligent efforts to secure sworn statements from all persons, corporations or firms, doing business as merchants in the county of which he is assessor; that so far as he has been able to secure such statements, they are correctly set forth in the foregoing book.' Said book shall be returned by the assessor to the county board of equalization on the first Monday in September in each year, which said board, as constituted in section 9811, Revised Statutes of 1929, is hereby required to meet at the office of the clerk of the county court on the first Monday in September in each and every year, for the purpose of equalizing the valuation of merchants' statements, and to that end shall have the same powers and shall proceed in the same manner as provided in article 3 of chapter 59, Revised Statutes of 1929, for the equalization of real and personal property, so far as is consistent with the provisions of this article; but after the board shall have raised the valuation of any statement, it shall give notice of the fact to the person, corporation or firm whose statement shall have been raised in amount, by personal notice through the mail, specifying the amount of such raise, and that the said board will meet on the fourth Monday in September to hear reasons, if any may be given, why such increase should not be made. After the county board of equalization shall have completed the equalization of such statements, the clerk of the county court shall extend on such book all proper taxes at the same rate as assessed for the time on real estate, and he shall, on or before the first day of October thereafter,

make out and deliver to the collector a copy of such book, properly certified, and take the receipt of the collector therefor, which receipt shall specify the aggregate amount of each kind of taxes due thereon, and the clerk shall charge the collector with the amount of such taxes; and such clerk shall receive as compensation for making such tax book, copy, filing statements, and certifying to same the sum of six cents for each name or firm, one-half payable by the county, the other by the state. The county assessor shall receive as compensation for his services in taking the statements herein required and entering them in the book herein provided for, the sum of twenty-five cents for each statement, and the members of the county board of equalization shall receive the same per diem for services under this article as fixed by section 9818 Revised Statutes of 1929, and the sum of the valuation of the statements as equalized by the county board of equalization shall be included in and made a part of the total valuation of property taxable for all purposes: Provided, that in counties under township organization the statements herein provided for shall be delivered to the clerk of the county court, who shall perform the duties hereinbefore required of the county assessor, and return the book to the county board of equalization on the first Monday in September, and thereafter the same proceedings shall be had thereon as in other counties: Provided, that in the city of St. Louis the duties in this section required to be performed by the county assessor, county clerk and collector, shall be performed by the license collector of said city of St. Louis, but said license collector shall not receive any fees or other compensation for such services than his salary as license collector; and provided further, that in the city of St. Louis the powers of this section vested in, and the duties required to be performed by, the county board of equalization, shall, as to the city of St. Louis, be vested in and performed by a board to be known as the board of merchants' and manufacturers' tax equalization,

which board shall consist of three discreet and experienced real estate owners of said city, of a prior residence therein of ten years, who shall be appointed by the mayor of said city annually in the month of May and shall meet at the office of the license collector of said city on the third Tuesday of June in each and every year, for the purpose of equalizing the valuation of merchants' statements, and shall have the same powers and proceed in the same manner as hereinabove provided with respect to county boards of equalization, except that the time for the meeting of said board to hear reasons, if any, why any increase made by the board should not have been made shall be the second Monday of July. The length of time that said board shall continue in session and the compensation to be paid the members of said board shall be fixed by ordinance of said city."

Section 9755, R. S. Mo. 1929, reads as follows:

"Every assessor who shall fail to perform any duty enjoined upon him by law, in the time prescribed, shall be removed from office by the county court, who shall appoint another in his stead. Such new assessor shall take a like oath and give a like bond as required of the first, and the county court shall enter up judgment summarily upon the bond of such delinquent assessor, against him and his sureties, for such amount as shall be sufficient to complete the assessment of the county."

From the foregoing statutes, it appears that one of the duties of the county assessor is to enter the statements of the various merchants within his county in a book prepared for that purpose and to return said book to the county board of equalization on the first Monday in September of each year. Section 10081, as set out above, also provides the compensation to be received by the county assessor for his services in taking such statements, and is twenty-five cents for each statement so taken and returned.

Since, according to your letter, your county assessor has failed to perform this duty, we believe that your county court has the right and power to remove said assessor from office.

You also raise the question of the compensation to be paid the assessor to be appointed by the county court. In the case of *State v. Gomer*, 101 S. W. (2d) 57, l. c. 68, we find Section 9755 R. S. Mo. 1929, cited and discussed in the following manner:

"Section 9754, R. S. 1929 (Mo. St. Ann. Sec. 9754, p. 7871), requires an assessor to give bond 'conditioned for the faithful performance of the duties of his office.' Section 9752, R. S. 1929 (Mo. St. Ann. Sec. 9752, p. 7871), requires him to 'take an oath that he will faithfully and impartially discharge the duties of his office, and that he will assess all the property in the county in which he assesses at what he believes to be its actual cash value.' Section 9755, R. S. 1929 (Mo. St. Ann. Sec. 9755, p. 7872) provides the county court shall remove from office any assessor 'who shall fail to perform any duty enjoined upon him by law, in the time prescribed,' and 'shall enter up judgment summarily upon the bond of such delinquent assessor, against him and his sureties, for such amount as shall be sufficient to complete the assessment of the county.' It seems apparent that the primary purpose, of requiring assessors to give bond, is to require the payment of the cost of assessment in case of failure to promptly enter upon the performance of the duties of the office or to faithfully and diligently seek to correctly list and properly assess all taxable property in the county, and to protect citizens, the county, and the state from loss from failure to properly perform these duties."

From the foregoing, it would appear that the county court has the power and should in its order removing the assessor who has failed to perform his duty, enter judgment against such assessor and the sureties on his bond for such amount as they

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sufficient to cover any loss suffered by reason of the assessor's failure to perform his duties. It occurs to us in the present case that the county has suffered no loss since it has not paid any part of the fees for making the merchant's assessment.

Upon the appointment of a successor to the office, the county court should pay such successor for the work performed by him as set out above. It is apparent that both the removal of the delinquent assessor and the appointment of another to fill that office are permanent within the time for which the original assessor was elected.

CONCLUSION

It is our conclusion, therefore, that you have the right, by order duly entered upon the records of the county court, to remove a county assessor who has failed to perform a material duty enjoined upon him by law, and to appoint a permanent successor to fill his unexpired term who must qualify in the same manner as the first and who shall thereafter be entitled to receive the compensation prescribed by statute for the fulfilment of the duties of an assessor.

We suggest that you have your county attorney draw up notices to be left at the residence of your present assessor, if he cannot be found, and served upon his bondsmen, advising them of the date set for disposition of the matter in order that they may be represented before you if they consider it necessary.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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