

- ASSESSORS: (1) Compensation for taking list containing only undivided interest in real estate in counties of 40,000 or less.
(2) Compensation for entering tract so owned in land book.

May 6, 1939

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Mr. S.T. McIntyre
Marion County Assessor
Hannibal, Missouri

Dear Sir:

This will acknowledge receipt of your letter of April 1, 1939, which reads as follows:

"In the past we have had quite a lot of difficulty in assessing property belonging to two persons or more as one tract and one valuation. For instance a party by the name of M.B. Burgher owns a half interest, C.E. Rendlen one-fourth int, and S.O. Osterhout, one-fourth int. Mr. Burgher has insisted upon paying and undivided one-half interest and he always wishes to pay his taxes in either October or November. Now this is not the only case but there are many of the same type in this County.

"For the past year, I have been assessing each one with their undivided interest or at least I show the interest each one owns, and make a list for each one and charge for three tracts as I make three separate entries in the book and of course charge for each assessment list.

"Sometimes the party owning the undivided interest own other property and

of course only charge for the one list but where they do not own other property I of course charge for the list.

"According to Section 9913 I do not see how the Collector could split the property unless the assessor would show the interest owned by each one.

"Will you kindly advise if I am not correct in making a charge for the list and tracts as outlined above?"

The questions which seem to be involved are: May the assessor charge for taking a list containing only real estate when the person from whom the list is taken owns only an undivided interest in the land and that undivided interest is all that is listed? May the assessor be paid, not to exceed the three cents per tract, for entering such an undivided interest, as a tract, in the land list book?

On January 26, 1938, we rendered an opinion to O.G. Schell, St. Elizabeth, Missouri, in which the compensation of assessors in counties the size of Marion (under 40,000) was discussed. We enclose a copy. In that opinion, we concluded that an assessor was entitled to thirty five cents for each list taken containing real estate (of course the list should contain all other property, real or personal, owned by the person in the county). A person listing an undivided interest, owned by him, in land, is in fact giving a list of the real estate he owns. The assessor is entitled to thirty five cents for each list, even though it only contains real estate (see enclosed opinion). While we find no cases or statutes which undertake to cover such a situation, we think the assessor is entitled to receive thirty five cents for taking a list containing only an undivided interest in real estate.

Section 9806, Laws of 1931, page 359, provides that the assessor "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, * * *: 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." (Parentheses ours).

It will be noticed that this statute first allows three cents per entry of tracts in the land list, stating that all real estate assessed to one person is to be counted as one name. Then the proviso says this is not meant to allow any pay per name entered opposite each tract of land assessed in the land book. In other words, it first says pay three cents for each name and then not pay three cents for each name. This is a direct conflict in said section and renders it a nullity insofar as any pay is given for entering the names of the owners of a tract of land in the land book. As was said in the case of State v. Gomer, 101 S. W. (2d) 57, l. c. 64:

"It seems impossible to harmonize the provision 'all real estate * * * assessed to one person to be counted as one name' with the provision in the same section that it was not to 'be so construed as to allow any pay per name' for assessing land. One would seem to cancel the other * *."

In the Gomer case at l. c. 66, the court in its sixth conclusion, said:

"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 tracts in the same section and 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."

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As we understand this case, the assessor is paid for entering the tract in his land book, not for entering the name of the owner or owners. By Section 9780, R.S. Missouri, 1929, the assessor is required to consolidate all lands owned by one person in a section into one tract, thus making one tract, so far as compensation for entering the tract in the land book is concerned.

This statute provides for the consolidation of tracts and we find none which authorizes the assessor to separate a tract of land when in fact there is no separation. What this would amount to if the assessor were to make separate entries on each owner's interest would be three entries of the same land. Such a duplication is not authorized and neither is the assessor entitled to the three cents per tract entered on such a duplication. He is paid for entering the land, not the owner's name. Once entered, it is there and the mere fact that the owner listed did not completely own said land does not keep it from being the entry of the land.

Such entry should be made describing the land and listing the owners' names without any reference to their interest. It is of no concern of the assessor what interest in the land the owners entered own. His duty is to enter the land, the owner's name, and fix its value.

Section 9913 operates to protect the interest of the owners if some co-owner does not raise his portion of the taxes, and not to authorize the assessor to separately assess a value on each undivided interest.

CONCLUSION

Therefore, it is our opinion that the assessor of a county containing 40,000 or less inhabitants is entitled to thirty five cents for taking a list containing only an undivided interest in real estate. He is not, however, entitled to three cents for entering an undivided interest of land in the land book, but must enter the whole tract, place the owner's name opposite, and make one charge of three cents for entering the tract in the land book.

Respectfully submitted,

APPROVED By:

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