

TAXATION:
COUNTY CLERK:

Duties of county clerk in relation to equalization of assessment by county Board of Equalization, State Board of Equalization and State Tax Commission.

April 16, 1942

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Mr. William Hicks, Secretary
Jackson County Board of Equalization
Kansas City, Missouri

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Dear Mr. Hicks:

This is in reply to your letter of recent date wherein you request an opinion from this Department on the following statement of facts:

"As Secretary to the Board of Equalization of Jackson County, Missouri, I have had it called to my attention that it is my duty to see that the tax base is substantially in accordance with the valuation for Real Estate as certified to me by the State Tax Commission for this County.

"Due to the numerous and unforeseen complaints being received by the Jackson County Board of Equalization, it appears our new base will be substantially lower than the amount as certified to me.

"Kindly advise me as to what position I am to take in regard to this matter so that I may extend the tax books accordingly."

In speaking of the steps which an assessment takes in the process of taxation, the court in *State ex rel. Thompson v. Bethards* 9 S. W. (2d) 603, 605 said:

"The regular course is as follows: After fixing the valuation under section 12802, the assessor makes an abstract of his footings and forwards the same to the state auditor. Section 12810, R. S. 1919. (Section 10990 R. S. Mo. 1939) The clerk is liable to a penalty if he fails to do that.

And when erroneous assessments are corrected by the county court for persons who make complaints (section 12817), (Section 10998, 1939) the clerk shall correct the tracts on the books under orders made by the county court (section 12818). (Section 10999, 1939)

"The state auditor, under section 12855, (section 11036, 1939) must lay before the state board of equalization the abstracts of all the taxable property of the state returned to him by the respective county clerks. The state board then equalizes the valuations of property between the several counties. Under section 12857, (sec. 11038, 1939) when the state board of equalization shall have completed its labors, it must transmit to each county clerk the per cent, added to or deducted from the valuation of the property of his county. Then the clerk shall furnish one copy thereof to the assessor, and one copy shall be laid before the annual county board of equalization. * * *"

Section 11007 R. S. Mo., 1939, provides as follows:

"In case the report from the state board of equalization be not received at or during the session of said county board, then it shall be the duty of the county clerk to adjust the tax books according to such report when received."

So, if the state board of equalization has not completed its work on the assessment at the time the county board of equalization meets, then the duty falls on the clerk to add or deduct the per cent necessary to adjust the tax books in conformity to the valuation as finally fixed by the state board of equalization.

Under section 11002 R. S. Mo. 1939, the county board of equalization is limited in its power to the amount fixed by the state board of equalization. This section reads as follows:

"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, and, having each taken an oath, to be administered by the clerk, fairly and impartially to equalize the valuation of all the taxable property in such county, shall immediately proceed to equalize the valuation and assessment of all such property, both real and personal, within their counties respectively, so that each tract of land shall be entered on the tax book at its true value: Provided, that said board shall not reduce the valuation of the real or personal property of the county below the value thereof as fixed by said state board of equalization."

Section 11027 R. S. Mo. 1939, which applies to the powers and duties of the state tax commission provides in part as follows:

"It shall be the duty of the commission, and the commissioners shall have power and authority, subject to the right of the state board of equalization, finally to adjust and equalize the values of real and personal property among the several counties of the state, as follows:

"To require from any officer in this state, on forms prescribed by the commission, such annual or other reports as shall enable said commission to ascertain the assessed and equalized value of all property listed for taxation, the amount of taxes assessed, collected and returned, and such other matter as the commission may require, to the end that it may have complete information concerning the entire subject of revenue and taxation and all matters and things incidental thereto."

"To furnish the state board of equalization at each session thereof a statement of the value of the taxable property in each county in the state, and, when so requested, to meet with the state board of equalization. The said statement herein referred to shall include a statement of the amount to be added to or deducted from the valuation of the real and personal property of each county, specifying the amount to be added to or be deducted from the valuation of the real or personal property, to the end that the state board of equalization may adjust and equalize the valuation of real and personal property among the several counties in the state as is provided by law."

By virtue of the provision of these sections, the State Tax Commission, requires the abstract of the assessment referred to in Section 10990 R.S. Mo, 1939, to be sent to it on what is called "Form 11". This information is furnished on Form 11, to the State Tax Commission in lieu of the report being made to the State Auditor, as is provided by said section 10990. The State Tax Commission, in lieu of the State Auditor, then lays this report before the state Board of Equalization, as is provided under Section 11036. After the County Board of Equalization has completed its work, the commission, under authority of the sections hereinbefore cited, requires the clerk of the county court to send to it, a report of the work of the said Board of Equalization, including the various classes of property taxed on Form 11a. This report is also submitted to the State Board of Equalization and the labors of that board are not completed until it has passed on this report.

Section 11038 R. S. Mo., 1939, provides as follows:

"When the state board of equalization shall have completed its labors, the state auditor shall immediately transmit to each county clerk the per centum added to or deducted from the valuation of the property of his county, specifying the percentage added to or deducted from the real property and the personal property respectively,

and also the value of the real and personal property of his county as equalized by said board; and the said clerk shall furnish one copy thereof to the assessor; and one copy to be laid before the annual county board of equalization. And it shall be the duty of the state auditor to require of clerks of the several county courts of this state to keep up the aggregate valuation of real and personal property in their respective counties, for those years in which no state board of equalization is held, to the aggregate amount fixed by the last state board of equalization."

Under this section, the state board of equalization, completes its labors relating to an assessment when it has finally considered and passed on the information contained in Forms 11 and 11a, which are returned by the county clerk to the state tax commission. If the labors of the state board of equalization, under Section 11038 R. S. Mo. 1939, are performed after the county board of equalization has adjourned, then under section 11007 R. S. Mo. 1939, it is the duty of the county clerk to adjust the tax books according to such reports, when received.

The duties of the county clerk in relation to the county board of equalization and the state board of equalization are stated in Section 11004 R. S. Mo. 1939, which is as follows:

"The said board shall hear and determine all appeals made from the valuation of property made by the assessor in a summary way, and shall correct and adjust the assessment accordingly. The county clerk shall keep an accurate record of the proceedings and orders of the board, and the assessor shall correct all erroneous assessments, and the clerk shall adjust the tax book according to the orders of said board and the orders of the state board of equalization; Provided, that in adding or deducting such per centum

to each tract or parcel of real estate as required by said board, he shall add or deduct in each case any fractional sum of less than fifty cents, so that the value of any separate tract shall contain no fractions of a dollar."

It will be noted here, that the clerk is subject to the orders of both, the county board of equalization and the state board of equalization. In other words, if the county board of equalization makes an order equalizing property in a class then it would be his duty to keep an accurate record of same and to adjust the books according to said order, subject, however, to any change which may be ordered by the state board of equalization.

Again referring to Section 11002 R. S. Mo. 1939, it will be seen that the county board of equalization cannot reduce property in a class to a value below that fixed by the state board of equalization, and if it has so done, such acts are void.

We also refer to Section 11029 R. S. Mo. 1939, which is in part as follows:

"When the work of assessment and equalization shall have been completed, the secretary of the state tax commission shall immediately certify to each county clerk a statement giving the per centum added to or deducted from the valuation of the property of his county, specifying the percentage added to or deducted from the real property and the personal property respectively, and also the value of the real and personal property of his county as equalized; and the said clerk shall furnish one copy thereof to the assessor and one copy to be laid before the annual county board of equalization. It shall be the duty of the state tax commission to require of clerks of the several county courts of this state to keep up the aggregate valuation of real and personal property in their respective counties to the aggregate amount fixed by the state tax commission. * * * * *

By this section, when the state board of equalization has completed its work on the assessment, that is, after it has considered the reports submitted on Form 11 and 11a, referred to above, the state tax commission then certifies to the clerk of the county court the per centum added to or deducted from the valuation of his county, specifying the percentage added to or deducted from the valuation of real and personal property and classes thereunder. This report is laid before the county board of equalization if such board is still in session and if not, then the clerk of the county court, under Section 11007 R. S. Mo. 1939, carries out the order of the state board of equalization and adjusts the books accordingly.

It will also be noted by this section that it is the duty of the state tax commission, to require the clerk of the several county courts to keep up the aggregate valuation of real and personal property in the respective counties to the aggregate amount fixed by the commission. The language used here respecting the duties of the tax commission to require the clerks to perform their duties is almost identical with the language used in Section 11038 R. S. Mo. 1939, which places the duty on the auditor to require the clerks to perform their duties relating to the assessment fixed by the state board of equalization and state tax commission. These sections may be read together and we think a proper construction on same would be that either the tax commission or the state auditor would be authorized to compel the county clerks to carry out their duties pertaining to these tax matters. In the Bethards case, supra, at l. c. 605, the court in speaking of the duties and powers of the board of equalization in reference to fixing the valuation at less than that fixed by the State board of equalization, said:

"That section means, if anything, that the state board of equalization fixes values as well as the assessor or the county board. Therefore the county board of equalization of Shelby county had no authority to reduce the valuation fixed by the state board. When it attempted to equalize the values in accordance with the prior valuations fixed by the assessor, which valuations had been annulled by the order of the state board of equalization, the proceeding was a nullity. The entire proceeding of the county board in the matter was of no effect."

"The county board of equalization, under article 3, c. 119, sec. 12821, is authorized to hear complaints and equalize valuations made by the assessor. It is nowhere authorized to increase or reduce the aggregate valuation fixed by the state board of equalization. It has no power to assess. State ex rel. v. Baker, 170 Mo. loc. cit. 391, 70 S. W. 872. Its duty is to equalize among the separate tracts the valuations fixed by the assessor. If the county board of equalization refuses to perform its duty, as it did in this case, then the statutes clearly contemplate that the county clerk shall adjust the valuation in accordance with the orders of the state board. * * * * *

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By the opinion in the Bethards case, supra, it will be seen that the county clerk must adjust the tax books according to the orders of the state board of equalization or those of the state tax commission, which are approved by the state board of equalization.

In the case of State ex rel. Thompson v. Dirckx, 11 S. W. (2) 38, an action was brought against the county clerk to require him to adjust the tax books to conform to the orders of the state board of equalization. The order of the state board of equalization in that case was made on May 16th, which was sometime after the labors of the county board of equalization had ended.

At l. c. 40, the court said:

"Respondent refuses to correct or adjust the assessor's books of Cole County so that they will conform to the order of the state board of equalization, giving as his reason therefor that he cannot do so without doing violence to and disobeying the order and judgment of the county board of

equalization, which he believes and alleges to be a valid and legal order and judgment.

"From the foregoing it is manifest that either the state board of equalization or the county board has exceeded its statutory jurisdiction, or else the statutes themselves engender an irreconcilable conflict. In order to determine where the fault lies it will be necessary to make a brief examination of the statutory scheme of assessing property for the purpose of levying ad valorem taxes."

Following the foregoing statement, the court in this opinion reviews the various taxing statutes relating to the duties of the county board of equalization, state board of equalization and county clerks.

At l. c. 41, in speaking of the county board's authority, the court said:

"* * * The county board's authority is limited to equalizing valuations of property within a class. If it finds one piece of property within a class overvalued, it follows as a necessary implication that the remaining property in the class, or at least some of it, is undervalued. This for the reason that the valuation of the whole as a class, is fixed by the state board and that cannot be changed. A reduction of the valuation of one or more pieces of property therefore requires a corresponding increase of the valuation of some or all of the remaining property in the class.

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"* * * The assessor is commanded to value

April 16, 1942

and assess all property according to its true value in money, and the state board of equalization to determine as to each class of property its true value in money. If these plain mandatory provisions are violated through discrimination as between the different classes of property, the power of correction does not lie with the county board of equalization. The taxpayer who suffers from such discrimination must find relief in a court of equity."

By this statement, it will be seen that the county board is limited to equalizing valuation within a class and it is not authorized to increase or decrease the total valuation in that particular class and if it does, it acts beyond its jurisdiction and therefore such acts are void.

In this case, the court held that the county clerk could be compelled by mandamus to adjust the tax books in conformity to the order of the state board of equalization.

In connection with your question, we are not unmindful of the duties of the county clerk with respect to the extension of taxes as provided by Section 11048. However, we do not think the assessor's books would be considered as corrected and adjusted until after the orders of the state board of equalization respecting the same have been complied with and the county clerk would thereafter have ninety days to perform his duties under said section.

CONCLUSION

From the foregoing, it is the opinion of this Department that it is the duty of the county clerk to adjust the tax books according to the orders of the county board of equalization and the state board of equalization and that in the performance of this duty he shall keep up the aggregate valuation of real and personal property to the aggregate amount fixed by the state board of equalization as certified to him by the state tax commission.

Mr. William Hicks

-11-

April 16, 1942

We are further of the opinion that if the county board of equalization completes its labors before the state board of equalization has completed its labors on such assessments, then it is the duty of the county clerk to adjust the assessors' books in accordance with the orders of the state board of equalization and of the state tax commission.

We are further of the opinion that in cases where the state board of equalization has completed its labors pertaining to the assessments before the county board of equalization adjourns, and in cases where the county board of equalization attempts to reduce the valuation of real or personal property in a class below the value thereof, as fixed by the state board of equalization, it is the duty of the clerk to refuse to enter such orders on the record of the proceedings of the board because such acts on the part of the board of equalization are null and void, under provision of section 11002 R. S. Mo., 1939.

Respectfully submitted

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APPROVED:

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