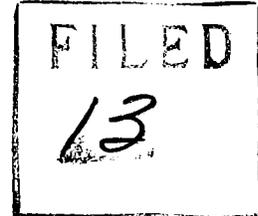


TAXATION:  
COUNTY COURT:

Power of county court to correct erroneous assessments of real estate under Sections 23 and 24 of HCSHB 469.

August 12, 1946

Hon. Hilary A. Bush  
County Counselor  
Jackson County  
Kansas City, Missouri



Dear Sir: .

We acknowledge receipt of your letter of August 5, 1946, requesting an official opinion of this office, and reading as follows:

"The County Court of Jackson County, Missouri has requested that I ask your office for an opinion on the following question.

"Section 24, HCSHB 469, signed by the Governor December 5, 1945, provides for the correction of certain erroneous assessments of real estate by the County Court. Section 11118, R. S. Missouri 1939, has been used by our County Court for this purpose but this section has been repealed. Your office gave a rather liberal interpretation some years ago relative to the powers of the County Court under the provision of Section 11118, now repealed.

"Because of the vast amount of real estate in Jackson County, only a small per cent is actually viewed by the Assessor in any one year and the valuation of other tracts is arrived at by carrying forward the figure from last year's books. In some instances substantial depreciation has taken place due to dismantling structures, fires and unusual wear and tear. These elements of depreciation are not taken into consideration by the Assessor in those instances where he merely carried forward last year's figure. Could

such an error in valuation be corrected by the County Court pursuant to the provisions of Section 24, HCSHB 469?

"If it is possible to give a general statement as to what type of erroneous assessments can be corrected pursuant to this statute we would appreciate it."

The opinions given by this office relative to the power of the county court under the provisions of Section 11118, R. S. Mo. 1939, were opinions rendered February 15, 1933, to Senator J. C. McDowell, Jefferson City, Missouri; November 24, 1934, to Hon. Walter H. Miller, County Assessor, Kansas City, Missouri; April 3, 1935, to Hon. Battle McCardle, Associate Judge, Western District, Jackson County Court, Kansas City, Missouri, and March 10, 1936, to Hon. Will H. Hargis, Prosecuting Attorney, Cass County, Missouri.

The opinion to Senator McDowell held that under the provisions of Section 9946, R. S. Mo. 1929 (Section 11118, R. S. Mo. 1939), the county court could not lower the valuation of property which the county court considered too highly assessed. The opinion rendered to Hon. Walter H. Miller held that the county court could change the assessed valuation of property, and was not limited to corrections of clerical errors. The opinion rendered to Hon. Battle McCardle held that the county court could not lower the valuation fixed by the board of equalization, and quoted from the opinion to McDowell holding the same thing. The opinion rendered to Hargis withdrew the opinion to McCardle, and held that the opinion to Miller was the opinion of the department. We believe it is the opinion rendered to Hon. Walter H. Miller that you refer to in your letter as giving a liberal interpretation of the powers of the county court under the provisions of Section 11118, R. S. Mo. 1939.

Section 11118, R. S. Mo. 1939 (now repealed), provided as follows:

"In all cases where any assessor or assessors, the county court, or assessment board, or any city council or assessment board, shall have assessed and levied taxes, general or special, on any real estate, according to law, whether the same be delinquent or otherwise, and until the same are paid and collected, with all costs, interests and penalties there-

on, the city council of any city and the county court of any county shall have the full power to correct any errors which may appear in connection therewith, whether of valuation, subject to the provisions of the Constitution of this state, or of description, or ownership, double assessment, omission from the assessment list or books, or otherwise, and to make such valuations, assessment and levy conform in all respects to the facts and requirements of the law. Any description or designation of property for assessment purposes by which it may be identified or located shall be a sufficient and valid description or designation."

The opinion rendered November 24, 1934, to Hon. Walter H. Miller, held that under Section 9946, R. S. Mo. 1929 (Section 11118, R. S. Mo. 1939), the county court had power to change the valuation of property and not merely to correct clerical errors. We quote from the opinion:

"Section 9808, R. S. Mo. 1929, provides as follows:

"'Sec. 9808. County Court to Remedy Erroneous Assessments. -- The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors or defects or mistakes; and where any lot of land or portion thereof has been erroneously assessed twice for the same year, the county court shall have the power and it is hereby made its duty, to release the owner or claimant thereof upon the payment of the proper taxes. Valuations placed on the property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section.'

"It will be noticed that Section 9808 above quoted is relatively similar to Section 9946,

with the exception of the last sentence of Section 9808 which we have underlined above. It seems obvious that the Legislature therefore, in omitting said sentence from Section 9946, intended Section 9808 to apply to mere clerical errors, while it intended Section 9946 to apply not only to clerical errors but also to errors of valuation with regard to the amount fixed by the assessing authority. In fact this is the only way the two sections can be reconciled without regarding one as mere surplusage, since, with the exception of the sentence above referred to, they provide substantially and in effect the same thing. It is a well recognized principal of statutory construction that in construing statutes, effect must, if possible, be given to every word, clause, sentence, paragraph and section of statute so that no part will be inoperative, superfluous or conflicting. (Dean v. Dawes (Mo. Sup.) 14 S. W. (2d) 990). Furthermore, Section 9808 appears in its identical form as Section 9197, Revised Statutes of Missouri, 1899, while 9946, then being Section 9317, R. S. Mo. 1899, applied at that time only to cities. This latter section was extended to apply to counties by an amendment in Laws 1909, page 725, the section then appearing in its present form with the exception of the 1933 amendment. We find, then, that Section 9946 in its present form was enacted subsequent to Section 9808, hence the well recognized principles of statutory construction lead us to the inevitable conclusion first, that the legislature purposely omitted the sentence in question for reasons stated above, and second, that should we assume any conflict in the sections the one subsequently enacted should prevail. \* \* \* \*

\* \* \* \* \*

"In concluding, we call your attention to the actual wording of Section 9946, i.e., 'full power to correct any errors which may appear in connection therewith, whether of valuation, subject to the provisions of the Constitution of this state, etc.' The section did not say that power was given to correct any errors of

valuation which might appear on the books, but gave power to correct any errors 'of valuation.' Clearly the words 'of valuation' were used by the legislature in the abstract and full sense. Had the legislature intended to refer merely to clerical errors it would clearly have employed other wording . \* \* \*

Section 9808, R. S. Mo. 1929 (Section 10998, R. S. Mo. 1939), quoted above, has been repealed. Section 24 of House Committee Substitute for House Bill 469 now contains the provisions dealing with the power of the county court to correct erroneous assessments, and provides as follows:

"The county court of each county may hear and determine allegations of erroneous assessment, or mistakes or defects in descriptions of lands, at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors or defects or mistakes. Where any lot of land or any portion thereof has been erroneously assessed twice for the same year, the county court shall have the power and it is hereby made its duty, to release the owner or claimant thereof upon the payment of the proper taxes. Valuations placed on property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section." (Emphasis ours.)

In the case of Clay County v. Brown Lumber Co., 119 S. W. 251, 90 Ark. 413; which case has been cited by the courts in many states as correctly stating the definition of "erroneous assessment," the Supreme Court of Arkansas said:

"It is urged by the appellee that an excessive valuation of property is an erroneous assessment thereof within the meaning of section 7180 of Kirby's Digest, so that a remedy is here given to one, who has paid taxes under these circumstances, by having the taxes refunded; but we do not think that the term 'erroneously assessed,' as used in said section, refers to an overvaluation of the prop-

erty. The term 'erroneous assessment,' as there used, refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officers in fixing the amount of the valuation of the property. If the property paid on was exempt from taxation, or if the property was not located in the county, or if the tax was invalid, or if there was any clear excess of power granted, so as to make the assessment beyond the jurisdiction of the assessing officer or board, then the provisions of Kirby's Dig. sec. 7180, give the owner a remedy for a refunding of such taxes thus erroneously paid; but a remedy is not given by this section to the party aggrieved by reason only of an excessive assessment or overvaluation of his property."

In the case of Home Owners' Loan Corporation v. Polk County, 1 N. W. 742, 231 Iowa 661, the Supreme Court of Iowa said:

"In regard to the provisions of the statute relative to the repayment of taxes claimed to be illegally or erroneously exacted or paid the following statement taken from Cooley on Taxation, Volume 3, 4th Edition, par. 1259, page 2502, is applicable.

"Some \* \* \* statutory enactments contain provisions which call for the refunding of taxes in those cases in which taxes illegally assessed or paid under mistake of fact, or where there has been some clerical mistake in the assessment or collection of taxes. The term "erroneously assessed," as used in such statutes, means an assessment illegal because of a jurisdictional defect and does not include a mere error of judgment in valuing the property." (Italics supplied)."

It is clear from the definition of "erroneous assessment" contained in the cases quoted above, and the fact that it is provided in Section 24 of House Committee Substitute for House Bill 469 that "valuations placed on property by the assessor or the board of equalization shall not be deemed to be erroneous assessments under this section," that a mere error of judgment in valuation of property by the assessor or board of equalization is not such an erroneous assessment as can be corrected under

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the provisions of House Committee Substitute for House Bill 469. The types of erroneous assessments that can be corrected under Section 24 of House Committee Substitute for House Bill 469 are assessments where the property assessed was exempt from taxation, assessments where the property is not located in the county in which assessed, assessments when the tax is invalid, assessments where the property was assessed in the name of the wrong person, assessments where the property was taxed to more than one person, assessments where the property was taxed more than once in the same year, and assessments where the valuation which was made by the assessor or board of equalization was incorrectly entered on the books as being a correct assessment. In each of these instances the valuations made do not involve an error of judgment, but involve an error because of lack of authority of law to make such assessment. In each of these instances there is a deviation from the law and not an error of judgment as to the correct value of the property.

#### CONCLUSION

It is the opinion of this department that the county court has no power to change the valuation placed on property by the assessor or board of equalization, under the provisions of Section 24 of House Committee Substitute for House Bill 469. The erroneous assessments which may be corrected are assessing property in the name of the wrong person, taxing the property to more than one person, taxing the property more than once in the same year, taxing land not subject to taxation, assessment of land not in the county, if the tax is invalid, and correction of clerical errors where the valuation by the assessor or board of equalization was incorrectly entered.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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