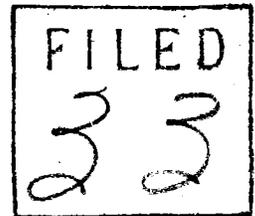


TAXATION: No provision for compensating assessor for picking up
real estate transfers in recorder's office and trans-
ASSESSOR: ferring them to plat books in his office.

July 23, 1947



Honorable Charles E. Ginn
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri

Dear Sir:

We have your letter of recent date wherein you request
an official opinion from this department on the following
statement of facts:

"I would like to have your opinion as to
whether or not it is the duty of the
assessor in a third class county to pick
up the transfer of real estate in the
recorder's office and transfer the same
to the plat books in the assessor's office,
and if so, is he allowed additional com-
pensation for such work."

The office of county assessor being one created by
statute, we must look to the statutes to ascertain its powers
and duties. In Laws of Missouri 1945, page 1791, Sections
30, 31 and 32, we find the following provisions relating to
plats of the lands in the respective counties:

"Section 30. Each county court of this
state shall procure from the register of
the United States land office and keep
on file plats of all townships and parts
of townships in their respective counties,
showing the county lines on a scale suf-
ficiently large to show the sections and
parts of sections, by their legal subdivi-
sions, and all lands subject to taxation
at that time, and also all private land
claims with the name of the original claim-
ant, the number of the survey and the num-
ber of acres."

"Section 31. In any county where land
plats or maps have been lost or destroyed,
the county court of such county shall pro-
cure others to supply the places of those

so lost or destroyed; and where any county court fails to procure such maps or plats at least sixty days before the time for commencing the assessment in any year, it shall be the duty of the assessor of such county to procure them, to be paid for by the county."

"Section 32. The assessor shall have free access to all land plats and maps during the time of assessment with a view to ascertain what lands are taxable; and upon the return of the assessor's books to the board of equalization, the said board shall compare the same with the plats and maps of the county; and in all cases where any lands have been omitted by the assessor, they shall be placed in the assessor's books and assessed as other lands are required to be assessed by this chapter."

From these sections, no provisions are made for the assessor to list transfers of real estate. The only connection the assessor has with the books, according to these sections, is that he has access to these plats and maps for the purpose of ascertaining what lands in the county are taxable.

According to Section 22, Laws of Missouri 1945, page 1789, it would appear that the lawmakers have considered it not necessary that the land be correctly assessed in the name of the owner because they have provided in this section that an error or omission in regard to the name of the person who owns the land shall not in anywise impair the validity of the assessment for taxes. This section reads as follows:

"Each tract of land or lot shall be chargeable with its own taxes, no matter who is the owner, nor in whose name it is or was assessed. The assessment of land or lots in numerical order, or by plats and a 'land list' in alphabetical order, as provided in this chapter, shall be deemed and taken in all courts and places to impart notice to the owner or owners thereof, whoever or whatever they may be, that it is assessed and liable to be sold for taxes,

interest and costs chargeable thereon; and no error or omission in regard to the name of any person, with reference to any tract of land or lot, shall in anywise impair the validity of the assessment thereof for taxes."

An assessor might get the idea that it is his duty to pick up these transfers of real estate in the recorder's office and transfer them to the plat books in his office on account of the provisions of Section 36, Laws of Missouri 1945, page 1793, l.c. 1794, which are as follows:

" * * * It shall be the further duty of the assessor, each year, in compiling the book provided for above, to procure the descriptions of the land and the names of the owners from the book known as and denominated 'the land list,' kept by the recorder as provided for in this chapter, carefully noting and accurately entering in their proper places all changes that may have occurred, either in the names of owners or descriptions of land since the last 'real estate book' was compiled. * * * "

It would appear from the foregoing quoted provisions of said Section 36 that the recorder of deeds is required to keep "the land list." Under authority of Section 9784, R. S. Mo. 1929, it was the duty of the recorder to keep this "land list." However, in 1939, Laws of Missouri 1939, page 840, this section was repealed; therefore, there is no "land list" in the recorder's office to which the assessor could refer for the purpose of procuring the descriptions of the land and the names of the owners thereof.

Section 36, Laws of Missouri 1945, page 1793, prescribes the duties of the assessor with respect to preparing the assessment books. The portion of this section, relating to the preparation of the real estate book, reads as follows:

"In all counties, except the city of St. Louis, the assessor shall be provided with two books, one to be called the 'real estate book,' and the other to be called the 'personal assessment book.' The 'real estate book' shall contain all lands subject to assessment. It shall be in tabular form, with suitable captions and separate columns.

The first column shall contain the name of the owner or owners, if known; if not, the name of the party who paid the last tax; if no tax has ever been paid, then the name of the original patentee, grantee or purchaser from the federal government, the state or county, as the case may be, opposite thereto; the second column shall contain the residence of the owner; the third column shall contain an accurate description of the land by the smallest legal subdivisions, or by smaller parts, lots or parcels, when sections and the subdivisions thereof are subdivided into parts, lots or parcels; the fourth column shall contain the actual cash valuation. When any person shall be the owner or original purchaser of a section, quarter section or half quarter section, block, half block or quarter block, the same shall be assessed as one tract. The assessor shall arrange, collect and list all lands owned by one person in the county, under his name and on the same page, if there be room to contain it, and if not, on the next and following leaf, with proper indications of such continuance, whether they be lots and blocks in a city, or sections or parts of sections in the country--the lowest numbered range, township and section, block, lot or survey always being placed first in such list, and so on in numerical order until said list for each property owner is completed. The assessor shall consolidate all lands owned by one person in a square or block into one tract, lot or call, and for any violation of this section, in unnecessarily dividing the same into more tracts than one or more lots than one, the county court shall deduct from his account for making the county assessment, ten cents for each lot or tract not so consolidated. At the close of each of the owners' lists, the assessor shall place all the lands that appear to belong to the said owner, which cannot be properly described by numerical order, as contemplated in this section,

which shall be otherwise properly described, indicating the quantity and location thereof. * * *

It would appear from this section that in order for the assessor to properly make his assessment that it would be necessary for him to obtain the information from records of the county as to who are the owners of the various pieces of real estate. If it is necessary for him to perform this function, it is incidental to his duties as assessor. In that case, the principle announced by the Supreme Court in the case of State ex Inf. McKittrick vs. Wymore, 132 S. W. (2d) 979, l.c. 987, might be applicable. In that case, the Court was discussing a section which prescribed the duties of the prosecuting attorney but did not go into detail. The Court approvingly quoted the rule from 46 C. J., Section 301, page 1035, as follows:

"The duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes."

The Court also quoted approvingly from Throop's Public Officers, Section 542, page 515:

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers."

So, if it is necessary for the assessor in making his assessments to pick up the transfers of real estate in the recorder's office and transfer them to the plat books in his office, it would be on account of the fact that he is required to list in the land book the name of the owner or owners of the lands which he is assessing.

Even if the assessor is required to perform this service, no provisions are made for compensating him for it. The compensation of the assessor in counties of the third class is found in Laws of Missouri 1945, page 1555. Section 1 of the act allows the assessor 45 cents per list for making assessments and six cents per entry for making real estate and tangible personal assessment books. This same act provides for compensation for the assessor for serving as a member of the county board of equalization, for taking merchants' tax statements and entering them in the tax books, for making lists for agricultural statistics and for attending the annual assessors' meeting called by the state tax commissioner. This act makes no provision for compensating the assessor for any duties which he might perform in picking up transfers of real estate in the recorder's office and transferring them to the plat books, unless the lawmakers intended that the compensation of six cents per entry for making real estate and tangible personal assessment books would include pay for that service.

While the statutes do not expressly require the assessor to pick up these transfers of real estate in the recorder's office and transfer them to the plat books in his office, yet if it is necessary for him to do this in order to properly make his assessments, he must point out the statute authorizing compensation for this service before he would be entitled to such compensation. The rule announced in the case of Nodaway County vs. Kidder, 129 S. W. (2d) 857, 1.c. 860, would be applicable here:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. * * *

* * * * *

"It has been held that employment as city attorney, for which a salary was paid, includes services rendered in connection with a special tax matter, and that compensation as city attorney covers such service, and that a city collector may not contract with such city attorney for additional compensation for services in such matters. Edwards v. City of Kirkwood, 162 Mo. App. 576, 579, 142 S. W. 1109.

"In the case of Robinson v. Huffaker, 23 Idaho 173, 129 P. 334, 337, the defendant, who was a county commissioner and acting for the county as such, and drawing fees as such, was declared not entitled to additional pay for services rendered in inspecting roads and bridges. The court held that where one accepts an office with compensation fixed by law, he has no legal claim for extra compensation, and a promise by the county board to pay him an extra fee was not binding, though he had rendered services and exercised a degree of diligence greater than could legally have been required.

"In the case of City of Indianapolis v. Lampkin, 62 Ind. App. 125, 112 N. E. 833, it was held that a city clerk could not be paid extra compensation for preparing an index of council proceedings, since such work was an incident to the office and was an official duty."

These authorities clearly demonstrate the principle that an officer must point to the statute which provides for his compensation and that he can not be paid extra compensation for service incidental to his main duties.

In this opinion, reference is made to Section 36, Laws of Missouri 1945, page 1793. In order that one may not be misled as to the application of that particular section, we call attention to Section 37, Laws of Missouri 1945, page 1795, which provides in part as follows:

"Nothing in the preceding section shall be construed to apply to counties which have already adopted a method of plats and abstracts to facilitate the assessment and collection of the revenue; nor shall the provisions of the preceding three sections apply to counties having a less population than forty thousand, unless a majority of the voters in any such county shall elect to adopt its provisions at a general election, upon the question being ordered to be submitted by the county court: * * *"

It will be noted from this section, however, that if a county has already adopted a method of plats and abstracts to facilitate the assessment and collection of revenue that the provisions of Section 36, hereinbefore referred to, would not be applicable. If the plan which the county has adopted should require the assessor to list the property in the name of the owner, our conclusion as to that class of counties would be the same as to those which follow the provisions of said Section 36. This is by reason of the fact that such duties would be incidental to the assessment of property by the assessor and for the further reason that the statute does not make any provision for compensating the assessor for that particular service.

CONCLUSION

From the foregoing, it is the opinion of this office that the statutes do not expressly require the assessor in a county of the third class to pick up the transfers of real estate in the recorder's office and transfer them to the plat books in his office, but if as incident to his duties in making assessments he does perform this service, there is no authority under the statute for compensating him for such work.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM