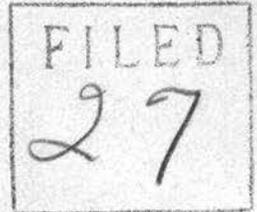


corn that has been harvested is personal property and is assessable. Assessors may be removed by order of the county court for failure to perform duties enjoined upon them by law; assessors may be proceeded against for failure to perform duties enjoined upon them by law upon their official bond, by the presiding judge of the county court, by the prosecuting attorney, or by any individual acting in his private capacity. Assessors failing to perform the duties of their office may be proceeded against in quo warranto.

February 7, 1949



2-10
Honorable Clarence Evans
Chairman, State Tax Commission
Jefferson City, Missouri

Dear Mr. Evans:

We are in receipt of your letter requesting an opinion from this office upon the following issues presented in the form of two questions, the first one of which is:

"1. Should corn that has been harvested and is in the crib, bin, or is piled upon the ground, be assessable as tangible personal property?"

Cooley on Taxation, Volume 2, paragraph 561, states:

"Growing crops are taxable as real property before severance. After severance they are taxable as personalty."

The case of *Bechler v. Bittick*, 121 S.W.(2d) 188, 1.c. 191, states:

"It thus appears to be the law that where one in possession of land, even as a mere trespasser, plants, cultivates, and brings to maturity a crop, and severs it from the soil, he thereby becomes the owner of the crop; * * * *"(Emphasis ours.)

The *Bechler* decision is sustained and quoted with approval in *Dent v. Dent*, 350 Mo. 560.

A long line of Missouri cases uniformly hold that crops which have been severed from the land upon which they grew are personal property. There are no Missouri decisions contrary to these holdings. Since crops which have been severed from the land are personal property, they should, of course, be assessed as such.

In view of the above, the answer to your first question is "Yes".

Your second question, restated by us in the second line of our answer to your first inquiry is:

"If the answer (to the first question) is "Yes" (which it is) what is the penalty if the assessor knowingly refuses to assess the same?"

Section 7, page 1784, Laws of Missouri, 1945, under the title of TAXATION AND REVENUE, states:

"Every assessor who shall knowingly 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."

The above section would appear to constitute a clear grant of power to county courts to remove assessors who knowingly fail to perform any duty enjoined upon them by law, of which the assessment of all personal property within their county is certainly one.

We would call your further attention to Section 11234, R. S. No. 1939, which states:

"Every county clerk, assessor, collector or other officer, who shall in any case refuse or knowingly neglect to perform any duty enjoined on him by this chapter, or who shall consent or connive at any evasion of its provisions, whereby any proceedings required by this chapter shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the same be entered upon the tax list at less than its full cash value, shall for every such offense, neglect or refusal be liable, individually and on his official bond, for

double the amount of the loss or damage caused thereby, to be recovered in an action of debt, in any court having jurisdiction, or by indictment, and may be removed from his office at the discretion of the court."

It is our opinion that this above quoted section confers the power upon the prosecuting attorney of any county, upon the judge of any county court of any county, or upon any citizen of any county acting in his individual capacity, to institute a civil action against any county assessor who is delinquent in the performance of the duties of his office.

We would call your further attention to the case of State ex inf. McKittrick v. Wymore, 119 S.W.(2d) 941, which case holds that if a county officer neglects to perform the duties enjoined upon him by law in the conduct of his office he may be proceeded against in a quo warranto proceeding.

CONCLUSION

It is the conclusion of this office that corn that has been harvested and is in the crib, bin, or is piled upon the ground, is assessable as tangible personal property.

It is the further conclusion of this office that if a county assessor fails to perform the duties enjoined upon him by law that he may be removed from office by the county court; that he may be sued upon his official bond by the presiding judge of the county court, by the prosecuting attorney, or by any individual acting in his private capacity; or that quo warranto proceedings may be brought against such a negligent assessor to remove him from office.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

HPW:mw