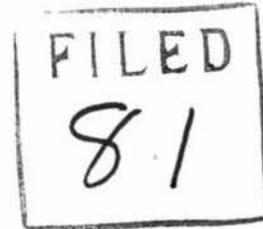


COUNTY BOARDS OF EQUALIZATION

Deputy County Surveyor may not serve in place of County Surveyor as a member of County Board of Equalization.

July 14, 1949

Mr. Sam Semple
Prosecuting Attorney
Moberly, Missouri



Dear Sir:

This is to acknowledge receipt of your request for a legal opinion of this department based on facts outlined in your letter and summarized as follows:

Mr. Hamilton B. Holman is the duly elected, qualified and acting county surveyor of Jackson County, Missouri, and as such has the legal authority to appoint deputy surveyors to assist him in the performance of his duties. That in counties of the third class (to which class Randolph County belongs) the county surveyor is a member of the County Board of Equalization.

The question now arises as to whether or not one of the deputy surveyors appointed by Mr. Holman may sit in his place and perform his duties as a member of the County Board of Equalization.

Section 11001, Laws of Mo. 1945, page 1775, creates the County Board of Equalization in each county of the state, and reads as follows:

"In every county in this state, except as otherwise provided by law, there shall be a county board of equalization consisting of the judges of the county court, the county assessor, the county surveyor, and the county clerk who shall be secretary of the board without vote. This board shall meet at the office of the county clerk on the second Monday in July, 1946, and on the second Monday of July of each year thereafter: Provided, that in any county having township organization the sheriff of said county shall also be a member of the board of equalization."

Section 11002, Laws of Mo. 1945, page 1775, defines the powers, duties and oath of the members of the County Board of Equalization and reads as follows:

"The members of the county board of equalization shall each take an oath, to be administered by the clerk, to fairly and impartially equalize the valuation of all taxable real estate and tangible personal property in the county. Said board shall have the power and the duty to hear complaints and to equalize the valuation and assessments upon all taxable real and tangible personal property within the county so that all such property shall be entered on the tax book at its true value: Provided, that said board shall not reduce the valuation of the real or tangible personal property of the county below the value thereof as fixed by the State Tax Commission."

Under the provisions of Section 13208, R. S. Mo. 1939, the Surveyor of Randolph County had the authority to appoint deputies to assist him in the performance of the duties of his office. Before entering upon the discharge of their duties the deputies were required under the provisions of this section to take an oath, "To well, truly, and faithfully discharge the duties of deputy surveyors." Ordinarily the deputy of a public official must possess the same qualifications, and may perform any or all of the duties of such public official. The actions of the deputy then become those of the principal, and he is held legally responsible for the actions of such deputy.

In view of this general principle of law, it would seem that a deputy surveyor of Randolph County might take the place of and perform the duties of the County Surveyor as a member of the County Board of Equalization of said county, in the absence or inability of the surveyor to act.

However it is noted that the oath of office to be taken by deputy surveyors, as provided by section 13208 supra, referred only to the faithful performance of the duties of deputy surveyors. The deputy might legally perform the duties of the office to which he had been appointed, among which would be that of acting in the place of his principle in the absence or inability of that official to act. He would have no legal authority to perform the duties of another or different office than that to which he had been appointed, and in the event he were to attempt to act as a deputy to some other official than that of county surveyor, his acts would be a mere nullity.

Section 11001 supra, named the officials who were to compose the County Board of Equalization. No other officer or person than those named could become a member. The members of this board who were all county officials became members by virtue of this provision of the statute, and not because they had been elected to a county office.

As noted above the County Surveyor of Randolph County may appoint a deputy surveyor under the provisions of Section 13208 supra, but there is no statute authorizing the appointment of a deputy member of the County Board of Equalization. It would therefore follow that a deputy county surveyor would not be and could not become a deputy member of the Board of Equalization and could only perform the duties of a deputy county surveyor.

Even though it were assumed that a deputy county surveyor might legally perform the duties of his principle as a member of the County Board of Equalization, regardless of the reasons heretofore given, it is further contended that a deputy county surveyor could not perform these duties for reasons to be noted hereafter.

In the absence of statutory provisions authorizing the appointment of a deputy member of said Board, such action must be justified by common law, if at all.

Under the common law rule in effect in Missouri, a public official might appoint a deputy to perform ministerial duties. The appointment of a deputy to perform duties requiring discretion and of a judicial nature has not been authorized in Missouri.

In the case of State ex rel. v. Reber, 226 Mo., 1.c. 234, the court said:

"As has been said already the duties of the president of the board of public improvement are of two kinds, the one is such as requires the exercise of discretion and judgment, involving often scientific and technical knowledge, the other requires the performance of mere ministerial or clerical work. The duties first mentioned cannot be delegated, those of the ministerial kind may be delegated to with proper care."

Other cases upholding this general rule are: Small v. Field, 102 Mo., l.c. 119; Am. Jur., Vol. 43, page 221; Hunter v. Hemphill, 6 Mo., 106.

Section 11002 supra, makes it the duty of the County Board of Equalization to hear complaints and to fairly and impartially equalize the valuation and assessments upon all taxable property located in the county, in order that all such property may be entered on the tax book at its true value. It is readily seen that the performance of the duties outlined in this section calls for the exercise of sound discretion, knowledge of the value of the taxable property within the county, some knowledge of the laws relating to taxes, general business experience, and good judgment are all essential if said Board is to successfully perform the duties enjoined upon it by the statute. Such duties are of a judicial nature and it would be neither legal or practical to assign them to some clerk or other ministerial subordinate who was less qualified to perform them than themselves.

Missouri cases in which it has been held that the duties of a county board of equalization in equalizing the value of property are of a judicial nature are cited as follows: Black v. McGonigle 103 Mo. 193; State ex rel. Johnson v. Bank, 279 Mo. 228; Kennen et al v. McFarling et al, 165 S.W. (2d) 681.

CONCLUSION

It is therefore the opinion of this department that a duly elected, qualified and acting county surveyor may appoint deputy surveyors under the provisions of Section 13208, R. S. Mo. 1939. That such deputies may perform any of the duties of the positions to which they have been appointed, and may act in the place of the principle when required.

It is the further opinion of this department that under the provisions of Section 11001, R.S. Mo. 1939, the county surveyor is a member of the County Board of Equalization, and that said office is separate and distinct from that of county surveyor. That said section makes no provision for, nor does it authorize the appointment of a deputy-member of the County Board of Equalization. The duties of said Board are of a judicial nature, and may not be delegated to another for performance. It therefore follows that a deputy county surveyor could not become a deputy-member of the County Board of Equalization and would have no authority to act for his principle when the surveyor could not be present

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as a member of said Board. The deputy surveyor would only have authority to perform the duties of the position to which he had been appointed, namely, deputy county surveyor.

For the foregoing reasons the duties of the county surveyor as a member of the County Board of Equalization may not be delegated to a deputy surveyor, but must be personally performed by such county surveyor.

Respectfully submitted,

PAUL N. CHITWOOD
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General