

ASSESSORS : County Assessors are entitled to fees provided  
: in House Bill No. 392, in addition to other  
HOUSE BILL NO. 392 : compensation provided by law.

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**41**

*5-26-52*

May 26, 1952

Honorable W. H. Holmes  
State Auditor  
State Capitol  
Jefferson City, Missouri

Dear Mr. Holmes:

We have given careful consideration to your request for an opinion, which request is as follows:

"Is the county assessor allowed the fee of twenty-five cents provided in Section 150.070 and 150.340 RSMo 1949, in addition to the fee of forty-five cents and six cents provided in Section 150.335 of House Bill Number 392, passed by the Sixty-Sixth General Assembly (making a total of seventy-six cents)? If so, is the assessor entitled to charge for all of said fees for the year 1952?"

House Bill No. 392 was enacted by the 66th General Assembly of Missouri in 1951 and became effective on the 18th day of March, 1952.

This new law is an amendment to Chapter 150, RSMo 1949, which provides ways and means for taxing merchants and manufacturers in the state. Under Section 150.055 of the act the assessor is required, at least once each year before the first Monday in May, to visit and inspect each place of business owned and operated by any merchant within his county, for the purpose of obtaining such information as may be desirable or necessary in facilitating the process of assessing the property of the merchant. Section 150.060 of the new law makes it the duty of the assessor to report such information to the county board of

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equalization on the second Monday in July in each year. The assessor is also required by Section 150.325 to visit and inspect each place of business owned and operated by any manufacturer within his county. He is also under duty, as provided in Section 150.330, to report the information thus obtained to the county board of equalization.

Section 150.335 of the new act is as follows:

"For visiting and inspecting the establishments of each merchant or manufacturer as required by sections 150.055 and 150.325, the county assessor in all counties of classes three and four shall receive a fee of forty-five cents, and for making each report required by sections 150.060 and 150.330 he shall receive a fee of six cents."

It is very evident that the Legislature intended to give the assessor extra compensation for the additional services required of him in connection with his new duties. As a matter of fact, this interpretation of the act is stated in the title of the bill. The new law does not alter the functions or the fees already established for the assessor. It simply adds new duties and provides additional pay for the performance of such service.

The act became effective on the 18th day of March, 1952. The duties imposed by the new law were then incumbent upon the assessor. Although he did not have full time in which to make the required visits and inspections before the first Monday in May of the present year, he should have made diligent effort to complete the work and file his reports as required by law. He is entitled to all fees earned in said service for the year 1952.

There is, however, a constitutional question involved. The Constitution of Missouri, in Section 13 of Article VII, provides that the "compensation of state, county and municipal officers shall not be increased during the term of office." But the Courts of Missouri have sustained the opinion that this injunction does not prohibit an officer from receiving extra pay for additional duties imposed upon him.

In State ex rel. vs. Sheehan, 269 Mo. 421, l.c. 429, the Supreme Court of Missouri said:

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"Another contention made is that since the appellant was an officer at the time of the passage of the act, it is inapplicable to him because the Constitution prohibits any increase in the pay of an officer during his term of office. We think this contention unsound because the act in question enjoins upon such officers as appellant new and additional duties and provides merely a compensation therefor. While in some jurisdictions a constitutional provision such as ours has been held to inhibit even this, in this and many other states the contrary doctrine has been accepted and acted upon. (Cunningham v. Current River Railroad Co., 165 Mo. 270; State ex rel. v. Walker, 97 Mo. 162; State ex rel. v. Ranson, 73 Mo. 89; State ex rel. v. McGovney, 92 Mo. 428; County v. Felts, 104 Cal. 60; State ex rel. v. Board of Commissioners, 23 Mont. 250; State ex rel. v. Carson, 6 Wash. 250; Love, Attorney-General v. Baehr, Treasurer, 47 Cal. 364; Purnell v. Mann, 105 Ky. 87; Lewis v. State ex rel., 21 Ohio C.C. 410.)

"It is our opinion that the act is valid and that the appellant is entitled to the fees demanded and that the respondent was not justified in refusing to audit the account and draw a warrant therefor on the city treasury."

#### CONCLUSION

It is the opinion of this office (1) that assessors in counties of classes three and four are entitled to the fees provided in Section 150.335 of House Bill No. 392, in addition to other compensation provided in Sections 150.070 and 150.340, RSMo 1949; (2) that the assessor may be entitled to all of said fees for the year 1952.

Respectfully submitted,

APPROVED:

  
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BAT: