

TAXATION: Assessment lists cannot be added to the Assessor's book in class three counties after his book has been turned over to the County Clerk.  
ASSESSOR'S FEES:



January 31, 1953

1-31-53

Honorable Elmer Peal  
Prosecuting Attorney  
Pemiscot County  
Caruthersville, Missouri

Dear Mr. Peal:

This will be the opinion you requested from this Department whether or not the Assessor of your county is entitled to fees for making a tangible personal property list for a citizen in 1952 for the previous year, when no tax list was made by the citizen in 1951, after the Assessor's book has been turned over to the County Clerk as required by law, and whether or not such Assessor is entitled to a fee for making a tangible personal property list for the same individual for the year 1952 itself, after the Assessor's book has been turned over to the County Clerk. Your letter requesting this opinion reads as follows:

"Obye Coker, Assessor, requested me to obtain your opinion as to whether or not he is entitled to a fee in the following cases:

"Where a person who was not assessed last year, and in order to obtain license tags for his car he must have a personal tax receipt, he voluntarily requests an assessment be made and the assessment is made, and the assessor has to make a supplemental or a return on the tax books, which have been turned over to the County Clerk as required by law. In such a situation is the assessor entitled to a fee.

"The other situation is the above person is assessed at the same time for this year, 1952. The books are in the hands of County Clerk, when the return is made after the books have been delivered to County Clerk is Assessor entitled to a fee?

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"I am sure you see the situation and will cover the matter in all respects, I am,"

Your letter submits two questions respecting the right of an Assessor to fees under slightly different conditions of fact, but both questions must be subject to the positive condition stated in your letter that in each factual case the Assessor's book had been turned over to the County Clerk of your county before either of the recited assessments of tangible personal property of the citizen referred to were made by the Assessor. We believe, therefore, that both questions may well be, and they here will be, answered together.

Pemiscot County is a county of the third class, and we will consequently refer to the sections of our present revised statutes relating to third class counties, respecting the date when an Assessor of a third class county shall deliver his book to the County Clerk and what fees such Assessor may be entitled to and when he may collect such fees. Subsection 1 of Section 137.245, RSMo 1949, fixing the date when Assessors of third class counties shall deliver the assessment book to the County Clerk of such counties, reads as follow:

"1. The assessor, except in St. Louis city, shall make out and return to the county court, on or before the thirty-first day of May in every year, a fair copy of the assessor's book, verified by his affidavit annexed thereto, in the following words, to wit:

" . . . . ., being duly sworn, makes oath and says that he has made diligent efforts to ascertain all the taxable property being or situate, on the first day of January last past, in the county of which he is assessor; that, so far as he has been able to ascertain the same, it is correctly set forth in the foregoing book, in the manner and the value thereof stated therein, according to the mode required by law."

Section 53.130, RSMo 1949, prescribing the compensation of Assessors in counties of the third class in Missouri, based upon the required recitals in the Assessor's book, reads as follows:

"The compensation of the county assessor in counties of the third class shall be forty-five cents per list, and each county assessor shall be allowed a fee of six cents

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per entry for making real estate and tangible personal assessment books, all the real estate and tangible personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other one-half out of the state treasury. The assessor in counties of the third class shall place the street address or rural route and post office address opposite the name of each taxpayer on the tangible personal property assessment book; provided, that nothing contained in this section shall be so construed as to allow any pay per name for the names set opposite each tract of land assessed in the numerical list."

Your letter states that, in compliance with the terms of that part of Section 137.245, quoted above, the Assessor's book, before the assessment for the citizen was made in 1952 for the year 1951, on certain tangible personal property described in your letter, and before the assessment of tangible personal property of the same individual was made in 1952 for the 1952 current year, had already been delivered to the County Clerk. It seems clear in reading Section 137.245, supra, and the affidavit required to be made by the Assessor in support thereof, that the Legislature intended in the enactment of such section that the duties of the Assessor imposed upon him in any fiscal year in making up his book should be fully complied with before turning the assessment book over to the County Clerk, on or before the 31st day of May of each fiscal year, and that his connection with and his authority over such books would then be at an end. We find no statute, or any part of any statute, giving the Assessor any authority, or the County Clerk, in behalf of the Assessor, any authority, to add property, unassessed while the book was in the hands of the Assessor, to such book after it reaches the custody of the County Clerk. The affidavit required to be made by the Assessor that his book contains a list of all property in his county, so far as he has been able to ascertain, adds support to our belief that the book must be completed and all assessment lists for that year be included in such book before May 31st of each year and before the book is turned over to the County Clerk, and that after which date and time neither the Assessor nor the County Clerk may add unassessed property thereto, and that, in such case,

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there is no compensation due the Assessor for making such lists out of time and which are not in the book.

We believe, under the terms of Section 137.245, which requires that the Assessor's book must be turned over to the County Clerk on or before May 31st of each year, and under the terms of Section 53.130, which provides that the Assessor is entitled to compensation for assessing property listed and described in said book, and it further appearing that the two assessments noted in your letter had been made by the Assessor after his book had been turned over to the County Clerk, the Assessor is not entitled to compensation for either of such assessments.

It has become a trite saying in the decisions construing the statutes allowing fees to public officers for their services that they must base their claims for compensation upon a statute permitting it. Our Supreme Court in the case of Nodaway County vs. Kidder, 129 S.W. (2d) 857, considering such a case, l.c. 860, said:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

#### CONCLUSION.

It is, therefore, the opinion of this Department that, considering the premises, the Assessor of Pemiscot County is not entitled to compensation for making an assessment list in 1952 for an individual on tangible personal property not assessed in 1951, said assessment being made after the current 1952 assessment book had been turned over to the County Clerk of said county, and neither is the said Assessor entitled to compensation for making an assessment list for the same individual in 1952 for the fiscal year of 1952, where such last

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named assessment is made after the Assessor's book for 1952 has been turned over to the County Clerk of said county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON  
Attorney General