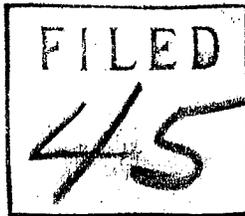


COUNTY BOARD OF EQUALIZATION:

PROSECUTING ATTORNEY:

When a writ of certiorari is issued against a county board of equalization, it is part of the official duty of the prosecuting attorney of the county to represent the board in all subsequent legal proceedings relative to the issuance of the writ.



September 14, 1954

Honorable Duncan R. Jennings  
Prosecuting Attorney  
Montgomery County  
Montgomery City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"A Writ of Certiorari has been directed against Arthur Seiler, Otis Leamaster, Oscar Lichte, Walter Baher and William Palmer, as members of the Montgomery County Board of Equalization.

"Request an opinion as to whether or not the Prosecuting Attorney is required, in his official capacity, to represent said parties, or if not, can he be retained in his civil capacity to represent said parties and be paid a fee by the County of Montgomery."

The duties of prosecuting attorneys are set forth in Section 56.060, RSMo 1949, which reads in part:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county; and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses. \* \* \*"

Also, in Section 56.070, RSMo 1949, which reads:

"He shall prosecute or defend, as the case

may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before the magistrate courts, when the state is made a party thereto; provided, county courts of any county in this state owning swamp or overflowed lands may employ special counsel or attorneys to represent said county or counties in prosecuting or defending any suit or suits by or against said county or counties for the recovery or preservation of any or all of said swamp or overflowed lands, and quieting the title of the said county or counties thereto, and to pay such special counsel or attorneys reasonable compensation for their services, to be paid out of any funds arising from the sale of said swamp or overflowed lands, or out of the general revenue fund of said county or counties."

For our purpose here the pertinent parts of the above sections are those which impose upon the prosecuting attorney the duty to "defend all civil suits against the state or county;" "defend all civil suits in which the county is interested;" "represent the county generally in all matters of law."

The question which we have to answer is whether a writ of certiorari directed against a county board of equalization constitutes a suit against the state or county; whether it is a suit in which the county is interested; whether it is a "matter of law" in which the county needs and is entitled to legal advice and representation.

We believe it to be all of these things. The county board of equalization is provided for by paragraph 1. of Section 138.010, RSMo 1949, which reads:

"Membership of county board of equalization --  
1. 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."

The duties are set forth by Section 138.030, RSMo 1949, which reads:

"Oath of members -- powers and duties. --

1. 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.

"2. 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."

It will be noted that the duties of the board pertain to taxation, which is a matter in which the county and the state are certainly vitally interested and concerned.

A writ of certiorari issued against a county board of equalization would have the effect of removing from the jurisdiction of the board a matter pertaining to taxation and placing the matter in the hands of a court for decision. This obviously could very substantially affect the revenue which would be obtained by a county. We believe that an action such as this of certiorari against a county board of equalization is an action against the county and/or state; and that it is a matter in which the county is interested. Certainly, it is a "matter of law" in which the county is entitled to legal representation. We believe, too, that the members of a county board of equalization are county officers discharging county duties which would entitle them to the advice and assistance of the prosecuting attorney.

CONCLUSION

It is the opinion of this department that when a writ of certiorari is issued against a county board of equalization it is part of the official duty of the prosecuting attorney of the county to represent the board in all subsequent legal proceedings relative to the issuance of the writ.

Honorable Duncan R. Jennings

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General

HPW:DA