

PUBLIC OFFICERS--deputy : Section 8 of Article VII of the Constitu-
county assessors: : tion of 1945 of this State prohibits the
: election or appointment of non-residents
: to public office in this State.
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June 27, 1955

Honorable Cowgill Blair, Jr.
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Mr. Blair:

This will be the opinion you requested from this office, at the instance of the Presiding Judge of the County Court of Jasper County, Missouri, and a like request from you asking for an opinion respecting two questions submitted for consideration. The request of the Presiding Judge of said county and your request, respectively, read as follow:

"The State Tax Commission has ordered, or rather has notified us that they will order about July 1, a raise in assessed valuation for Jasper County of 85% on urban properties and 60% on rural. We have decided that, due to shortness of time and the large amount of work involved, the only way we can comply with this order this year is to put on a blanket raise of that amount.

"However, we want to hire an outside firm and make a scientific reappraisal of all property later this year so we can have a new and accurate appraisal ready for next year. This will cost the county between \$60,000 and \$70,000. There is no such amount set up in the budget for this purpose.

"We do have an item of \$15,000 set up in the emergency fund. Also we anticipate that we will have a cash carryover of about \$25,000.

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"We understand that these outside appraisers will have to be deputy assessors, and will have to be paid through the assessor's office.

"Question No. 1: 'Does the County Court have the authority to transfer any available money after Nov. 1 to the assessor's account to be spent for this purpose?'

"Our budget was set up on the basis of 45 cents levy on about \$72 million valuation. This was a tentative levy, however, and the levy will not be officially set until after the board of appeals in August. At that time, having complied with the order of the Tax Commission, we will have a valuation of over \$100 million. In order to yield the same amount of money as previously budgeted, we will need a levy of only about 33 cents.

"Question No. 2: 'Can the County Court set this levy at enough higher rate than 33 cents to take care of the added expense of re-appraisal?'"

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"Enclosed is a copy of a letter from the Presiding Judge of the Jasper County Court which is self-explanatory.

"I would appreciate answers to Questions 1 and 2 and also would appreciate your opinion as to whether or not the County Court is authorized to spend \$60,000 to \$70,000 to employ a Chicago appraising firm to do this work.

"I would appreciate your opinion on these matters as soon as possible."

The request submits two questions by the Presiding Judge of the County Court of Jasper County, Missouri, and

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a supplemental question by the Prosecuting Attorney of that county.

The questions are all based upon the express statement in the request that persons of another state who are non-residents of Missouri are to be employed, apparently by the County Court of Jasper County, to make a reappraisal of all property in that county, and that such non-resident persons will have to be appointed deputy county assessors of Jasper County, and will have to be paid through the assessor's office of that county. That plan being the procedure proposed to be followed under the presupposed right of the County Court to employ such non-residents, and for such persons to be appointed deputy assessors of Jasper County who are to be so compensated for such reappraisal, render it unnecessary to answer Questions Nos. 1 and 2.

Appointment by the county assessor of Jasper County, Missouri, of citizens who are non-residents of this State as deputy county assessors to make a reappraisal or re-assessment of property in that county is prohibited by the Constitution of Missouri. The appointment of such non-residents to office as deputy county assessors of said county would give none of them any title or right to such offices.

Section 8 of Article VII of the Constitution of Missouri, prescribing qualifications for public office, and forbidding the election or appointment of non-residents to public office in this State, reads as follows:

"Qualifications for Public Office--Non-residents.--No person shall be elected or appointed to any civil or military office in this state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment, except that the residence in this state shall not be necessary in cases of appointment to administrative positions requiring technical or specialized skill or knowledge."

County assessors and deputy county assessors in this State are public officers. The performance of their duties in making assessments involves the exercise of discretionary judgment as an element of sovereign power in fixing values of property. There is nothing ministerial or administrative in the duties they must perform in making assessments of

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property.

The respective official oaths required to be taken by the assessor under Section 53.030 and by deputy assessors under Section 53.060 impose upon each of them duties requiring the exercise of discretion in fixing the value of property in completing an assessment. Our Supreme Court in the case of Wymore et al. vs. Markway, 338 Mo. Rep. 46, 89 S.W.(2d) 9, l.c. 13, on this subject said:

"* * * The principle is firmly established that in making assessment he acts in a judicial capacity. State ex rel. Wyatt v. Hoyt, 123 Mo. 348, 27 S.W. 382."

Section 53.030, prescribing the oath of office to be taken by a county assessor, reads as follows:

"Every assessor shall take an oath or affirmation to support the Constitution of the United States and of this state, and to demean himself faithfully in office and to assess all of the real and tangible personal property in the county in which he assesses at what he believes to be the actual cash value. He shall endorse this oath on his certificate of election or appointment before entering upon the duties of his office."

Section 53.040 prescribes that every assessor (except in the City of St. Louis) shall give a faithful performance of duties bond.

Section 53.060 provides that every assessor, except in the City of St. Louis, may appoint such deputies as needed and that each shall take the same oath and have like power as the assessor. Said section, so providing, reads as follows:

" Every assessor, except in the city of St. Louis, may appoint as many deputies as he may need, to be paid as provided by

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law. Each deputy shall take the same oath and have the same power and authority as the assessor himself. The assessor shall be responsible for the official acts of his deputies."

The question of the duties to be performed and other criteria bearing upon the question of who is a public officer is discussed and decided in the case of State ex rel. vs. Bus, 135 Mo. 325, 1.c. 331, 332, where the Court said:

"A public office is defined to be 'the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.' Mechem, Pub. Offices, 1. The individual who is invested with the authority and is required to perform the duties is a public officer.

"The courts have undertaken to give definitions in many cases, and while these have been controlled more or less by laws of the particular jurisdictions, and the powers conferred and duties enjoined thereunder, still all agree substantially that if an officer receives his authority from the law and discharges some of the functions of government he will be a public officer. * * *."

Section 10 of Article VIII of the Missouri Constitution of 1875, now Section 8 of Article VII of our present Constitution, as applied to Section 40(a), Article IV of the present Constitution on the same precise question was construed by the Supreme Court of Missouri in State inf. McKittrick vs. Bode, 342 Mo. Rep. 162, 113 S.W. (2d) 805, 1.c. 806, 807, where the Court said:

"It is not possible to define the words 'public office or public officer.' The cases are determined from the particular

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facts, including a consideration of the intention and subject-matter of the enactment of the statute or the adoption of the constitutional provision. In other words, the duties to be performed, the method of performance, and to be attained, depository of the power granted, and the surrounding circumstances must be considered. In determining the question it is not necessary that all criteria be present in all the cases. For instance, tenure, oath, bond, official designation, compensation, and dignity of position may be considered. However, they are not conclusive. It should be noted that the courts and text-writers agree that a delegation of some part of the sovereign power is an important matter to be considered. The question is considered at length in 46 C.J. p. 924. In determining that a deputy sheriff was a public officer, we stated the rule as follows:

"A public office is defined to be "the right, authority, and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public." Mechem, Pub. Off., 1. The individual who is invested with the authority, and is required to perform the duties, is a public officer.

"The courts have undertaken to give definitions in many cases; and while these have been controlled more or less by laws of the particular jurisdictions, and the powers conferred and duties enjoined thereunder, still all agree substantially that if an officer receives his authority from the law, and discharges some of the functions of government, he will be a public officer.
* * * "

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The ultimate holding in the Bode case, supra, where the Court quoted from the Bus case, supra, is that one is made a public officer who receives his authority from the State and discharges some of the functions of government in the performance of his official duties.

The rule approved by the Court in the Bus case and restated in the Bode case is applicable here to the effect that under both the facts and the law the county assessor of Jasper County, Missouri, and his deputies are public officers. The county assessor of Jasper County and his deputies so being public officers, the terms of Section 8 of Article VII, supra, of the Constitution of Missouri prohibit the appointment of non-residents of Missouri as deputy assessors of that county in this State for the purpose of making a reappraisal or re-assessment of property in said county. It follows, therefore, that the County Court of Jasper County is not authorized to spend \$60,000 to \$70,000 or any amount whatever of public funds to employ non-resident persons who will be appointed deputy county assessors of Jasper County, to make a reappraisal or re-assessment of property in said county.

CONCLUSION

Considering the premises it is the opinion of this office that the County Court of Jasper County is not authorized to spend \$60,000 to \$70,000 or any amount whatever of public funds to employ persons who are non-residents of this State who will be appointed deputy county assessors of Jasper County to make a reappraisal or re-assessment of property in said county, because the election or appointment to public office in this State of non-residents is prohibited by the terms of Section 8 of Article VII of the Constitution of Missouri, 1945.

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

Yours very truly,

JOHN M. DALTON
Attorney General

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