

STATE TAX COMMISSION:
ASSESSMENT OF PROPERTY:
INCREASE OF ASSESSMENT:

Order of the State Tax Commission in-
creasing the assessment of property in
certain counties so as to bring such
assessment up to 30% of the true value
does not violate the Missouri Constitu-
tion or the provisions of Section 138.390,
RSMo 1949.



March 30, 1955

Honorable J. S. Wallace, Chairman
House Committee to Investigate
Raise of Assessments by the
State Tax Commission
Room 313C, State Capitol Building
Jefferson City, Missouri

Dear Mr. Wallace:

You have recently requested an opinion of this office by
your letter of March 21, 1955, which reads:

"Under authority of House Resolution 70,
the Speaker appointed the undersigned six
members of the House of Representatives
as a committee to investigate the recent
actions of the Missouri State Tax Commis-
sion in raising the assessed valuations
in 26 counties of the state.

"Testimony revealed that the utilities of
the State of Missouri made an independent
survey of the state in order to show that
the assessed valuations in various counties
were too low. In Mississippi County, for
example, some 100 transfers were used to
determine that the assessed valuations on
town property should be raised 55% and farm
property 50% in order that the property,
both town and farm, be then assessed at 30%
of true value. It was admitted that true
value, as determined by the Commission, was
defined as that which a willing buyer would
pay a willing seller; the latter amount to
be determined by the federal stamps on the
warranty deeds that were checked.

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"The investigating committee feels that an opinion of your office as to whether or not this action of the State Tax Commission is in violation of Sections 3 and 4 of Article X of the Constitution of Missouri is imperative before a report can be rendered. This opinion is needed as soon as possible."

By letter of March 24, 1955, you requested that the opinion be expanded to answer the following question:

"We would like to add to the question asked your office by my letter of March 21, 1955, the question of whether or not the actions of the State Tax Commission in raising the assessed valuation in the various counties to 30% of their true value are in violation of Section 138.390 MoRS 1949."

Section 3, Article X, Missouri Constitution of 1945, provides:

"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. Except as otherwise provided in this Constitution, the methods of determining the value of property for taxation shall be fixed by law."

Section 4(a), (b) and (c), while having to do with the matter of taxation, and the assessment of property therefor, are not involved in the present opinion since, if the action of the State Tax Commission, to which you refer, would bring in question any constitutional provision, it would be that contained in Section 3 of Article X, supra.

It is our understanding that the State Tax Commission by its proposed order will raise the assessment in certain counties which presently have assessed their property at less than 30% of

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its true value so that after such raise the property in such counties will be assessed at 30% of its true value. Under these circumstances it is not believed that such action by the State Tax Commission would be violative of the provisions of Section 3, Article X, Missouri Constitution of 1945. This section provides that taxes "shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," commonly referred to as the "uniformity provision." The purpose of this provision is to require that property, regardless of ownership or location, will bear the same burden of tax as all other similar property wherever situated within the taxing authority. That is, that property of like kind will be taxed in the same proportion in all parts of the State where the State is the taxing authority, or in all parts of the county where the county is the taxing authority, and it would seem that the proposed action of the State Tax Commission is a step toward securing the uniformity commanded by this provision of the Constitution.

By Chapter 137, RSMo 1949, provision is set up for the State Tax Commission to act as an equalizing body on assessments within the State with the view to securing the uniformity directed by the provision of the Constitution discussed above. It is specifically provided by Section 137.115 that the assessor shall list and assess all property at "its true value in money," and it is further provided by Section 137.235 that the tax books of the various counties shall have room for the extension of assessments first, as made by the county assessor; second, as they may be changed by action of the County Board of Equalization; and, third and finally, as they may be affected by action of the State Tax Commission.

By Section 138.390 the State Tax Commission is directed between the dates of June 20 and the second Monday of July of each year "to equalize the valuation of real and tangible personal property among the several counties in the state." The Commission is directed to classify property for the purposes of taxation and to add to the valuation of each class of property for each county in which it believes the assessment to be below its real value in money, and to deduct from the valuation of each class of property in each county which it believes to be assessed above its real value in money.

As further showing the principle upon which the State Tax Commission is to function, Section 138.380 (4), RSMo 1949, directs the Commission to investigate tax laws of other states

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and countries, and to formulate and to submit to the legislature such recommendations as the commission thinks desirable "to secure just, equal and uniform taxes." Thus, it appears from these and related statutes that the Tax Commission is to act on an over-all state level to secure uniformity in the assessment of property for the purposes of taxation amongst the several counties so that property of similar nature will bear its same proportion of the tax burden regardless of its ownership or location within the State.

It would appear to be the purpose of the State Tax Commission in the action here under consideration to effectuate the above principles.

Such action by the Tax Commission is not new to the experience of this State, and has been considered and approved by the Supreme Court in the past. Thus, in the case of Columbia Terminal Company vs. Koeln, 319 Mo. 445, 3 S.W.2d 1021, the State Tax Commission and the State Board of Equalization (which then exercised power now exercised by the State Tax Commission) raised the assessment on sub-classes 3, 4 and 10 of personal property owned by residents of the City of St. Louis by 20% so as to bring such assessment into uniformity with the assessment of similar property in other parts of the State. It was contended that such action violated the constitutional rights of certain taxpayers but the Missouri Supreme Court en banc held that such action in raising the valuation was proper. It was on other grounds that the court invalidated the tax resulting therefrom. Likewise, in State ex rel. Thompson vs. Dierckx, 321 Mo. 345, 11 S.W.2d 38, the Missouri Supreme Court en banc approved the action of the State Board in raising the assessed valuation of property of a certain class within the county and forced the county clerk by mandamus to extend the assessment as finally fixed by the State Board. The same result was again reached by the Missouri Supreme Court in First Trust Company of St. Joseph vs. Wells, 324 Mo. 306, 23 S.W.2d 108.

It is not the action of the State Tax Commission in raising the assessed valuation of all the property within a county falling in one or more classes that violates the uniformity provision of the Missouri Constitution, but, rather, it is the action of the taxing authorities which result in unequal assessment (and thus unequal distribution of the tax burden) between various items of property within the same class that violates such constitutional mandate. Thus, in the case of Jefferson City Bridge & Transit Co. vs. Blaser, 318 Mo. 373, 300 S.W. 778, the plaintiff

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alleged that the State Tax Commission and Board of Equalization had raised the value of its property so that it was assessed the higher percentage of its true value than was other property of the same class within the State. The court stated, l.c. 785:

" * * * If the persons charged with making this assessment refused to assess plaintiff's property in proportion to its value and in uniformity with all other taxable property in the state, they are presumed to have known that such assessment would be in violation of sections 4 and 3, respectively, of article 10 of the Constitution of Missouri, and would result in unlawful discrimination against plaintiff's property. * * *"

See also Columbia Terminal Company vs. Koeln, 319 Mo. 445, 3 S.W.2d 1021, referred to, supra, wherein the Supreme Court held that the otherwise valid action of the taxing authorities was rendered unconstitutional by the fact that the increased assessment was not applied to property of the same class where such property was owned by the estates of decedents and minors. In Boonville National Bank vs. Schlotzhauer, (Mo. Sup.), 298 S.W. 732, the court very emphatically held that allegations of deliberate assessment of bank stock at 90% of its true value when all other property within the county was assessed at 75% of its true value stated a cause of action for injunction against the collection of the tax charged upon such assessment, since the patent inequality of the assessment violated the uniformity provisions of the Constitution which are now contained in Section 3, Article X.

As to the provisions of Section 138.390, RSMo 1949, it appears that the State Tax Commission has found that the valuation of property in certain counties is below its real value in money and, therefore, proposes to direct that such valuation shall be increased. This is in conformity with, rather than in violation of, the provisions of Section 138.390. It will be noted that the State Tax Commission is not at the present time taking the full step that is available to it, that of increasing the assessment to 100% of the real value in money of the property. On the contrary, it is limiting its order to directing an addition to assessments so as to raise the valuation to only 30% of the true value in money of the property involved. This is an endeavor to bring the assessment in such counties more nearly into alignment with the assessment in other counties of the State.

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CONCLUSION

From the foregoing, it is the conclusion of this office that the proposed action of the State Tax Commission in directing an increase in the assessed valuation of property in certain counties in this State so as to bring such assessment up to 30% of the true value, is not violative of the provisions of Section 3, Article X of the Missouri Constitution of 1945 or Section 138.390, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Yours very truly,

JOHN M. DALTON
Attorney General

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