

COUNTY COURTS:  
COUNTIES:  
ASSESSORS:  
DEPUTY ASSESSORS:  
TAX SHEETS:  
ISSUANCE OF WARRANTS  
BASED UPON TAX SHEETS:



(1) The county may recover the portion of the overpayment that has been made by it through the county court to the assessor. (2) The county court is entitled to count the sheets and inspect them before issuing the warrant for payment to the assessor upon said sheets. (3) There is no law making it mandatory upon the county court to advance money to the assessor sufficient to pay his deputies prior to the delivery of the tax books, and further, the county court is without authority to make such advancements prior to the delivery of the tax books.

March 23, 1956

Honorable Sam Appleby  
Prosecuting Attorney  
305 Courthouse  
Christian County  
Ozark, Missouri

Dear Mr. Appleby:

This department is in receipt of your recent request for our official opinion which reads as follows:

"The Christian County Court has requested me to advise them as to whether or not they are entitled to a refund from the county assessor to the full extent of 66¢ per tax sheet delivered to them that appears, after checking and placing on tax books to be one of the following:

"1. A double assessment, that is where one sheet is signed by the assessor and one duplicate signed by the individual assessed, which have heretofore been counted by the assessor as two sheets.

"2. Assessments of personal property of individuals no longer residing in Christian County and who were not living in Christian County on January 1st of the tax year, these all being signed by the tax assessor based upon his knowledge and belief, but which appear to the county court as they stated to me a mere copy of the tax sheet for the preceding year.

"The other question ask of me is whether or not the county court or their deputies are entitled to count the sheets before issuing the warrant when the books are turned over to the county clerk by the assessor. On this point, the court

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informs me that the assessor has specifically told them in the past that they could not lay a hand upon his works until the delivery was completed, which entailed the delivery of the warrant simultaneously to the assessor as he in turn handed them as they termed it, 'a pig in the poke'. The third question, the court propounded is, is there any law making mandatory their advancing to an assessor of a fourth class county sums, if any, sufficient to pay his deputies, all being prior to the delivery of the tax books.

"I find nothing specifically in our laws that prohibits the county clerk during the exchanging transactions to require the county clerk to accept the 'pig in the poke', as maintained by the assessor. I further find no authority for the county court to advance any sums for defraying his expenses until the assessment is completed.

"If your office has any opinions that would enlighten me on these problems, I hereby request a copy of each. If your office has expressed an opinion on these problems, I respectfully request an opinion on above problems, if not, I respectfully request your judgment and opinion."

Assuming that the money can be recovered, it should be made clear that the county court is not the proper party to institute a suit for the recovery thereof. The county court, as an agent of the county, may request the assessor to return the overpayment, but it is not otherwise the real party in interest.

It is the opinion of this office that the county can recover only the portion of the overpayment which it, through the county court, has paid out.

The authority to maintain the action can be found in Nodaway County v. Kidder, 344 Mo. 795, 129 S.W. 2d, 857. There the county court allowed claims for expenses by the presiding judge of said court, and warrants were issued and paid. The county then brought the action alleging that the claims for which the payments had been made were illegal, irrespective of the fact that the county court had allowed such. In allowing the county to recover back the amount that had been overpaid, the court said:

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"Plaintiff sued appellant for money had and received by appellant to plaintiff's use. This action is a favorite of the law. \* \* \* The action lies whenever one person has received money belonging to another which in equity and good conscience he ought to pay to the owner. \* \* \* When a public official wrongfully receives public funds, although paid to him under an honest mistake of law, he must restore such funds. \* \* \*

"The rule is stated in 15 C.J. 509, Sec. 176, as follows: 'Money paid to a county officer to which he is not entitled by law may be recovered back, without previous demand, in an action for money had and received instituted by the county.'

"The rule is also stated as follows: 'As a general rule any compensation paid to a public official by the state or other governmental body not authorized by law, or in excess of the compensation authorized by law, may be recovered by the proper governmental body \* \* \*.' 46 C. J. 1030, Sec. 285."

See also County of Jackson v. Fayman 329 Mo. 423, 44 S.W. 2d, 849, a related case, where the court discussed the issues of fraud, lack of consideration, and res judicata, along with the powers and duties of the county court.

Your second question is whether or not the county court or their deputies are entitled to count the sheets before issuing the warrant when the books are turned over to the county clerk by the assessor. It is the opinion of this office that the county court may count such sheets, and further, that it may make any audit or inspection necessary to determine the correctness of said sheets before issuing the warrant. See the case of State v. Gomer 340 Mo. 107, 101 S.W. 2d 57, involving the assessor's sureties liability. The court said at l.c. 68:

"\* \* \* When an assessor completes his work he does not decide the question of amount of compensation for himself, but must present a bill for his services, and it is the duty of the county court to investigate and audit his account before entering an order approving it for payment. \* \* \*"

Notice that the court says that the county court has the duty to investigate and audit the account before entering an order approving it for payment.

Lastly, you ask whether or not there is any law making it mandatory upon the county court to advance money to the assessor for the purpose of paying his deputies, prior to the delivery of the tax books.

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The answer to this question is that the county court may not make such advancements. It is without authority to make advancements to the assessors before the delivery of the tax books. See State v. Gomer and the language quoted therefrom cited on page 3 of this opinion.

See also the enclosed opinion written by this office to the Honorable George Q. Dawes, Prosecuting Attorney, Iron County, dated April 7, 1955.

CONCLUSION

It is therefore the opinion of this office that:

(1) The county may recover the portion of the overpayment that has been made by it through the county court to the assessor.

(2) The county court is entitled to count the sheets and inspect them before issuing the warrant for payment to the assessor upon said sheets.

(3) There is no law making it mandatory upon the county court to advance money to the assessor sufficient to pay his deputies prior to the delivery of the tax books, and further, the county court is without authority to make such advancements prior to the delivery of the tax books.

Yours very truly,

JOHN M. DALTON  
Attorney General

HLH/bi

Enclosure