

COUNTIES: TAXATION:
STATE TAX COMMISSION:
INCREASE OF ASSESSMENT:
ASSESSMENTS:

Increase of ten per cent or more in assessed valuation of a county made pursuant to order of the State Tax Commission before the county court finally sets the tax rate does not bring into operation the provisions of Section 137.073, RSMo Cumulative Supplement 1955.



March 8, 1956

Honorable J. Marcus Kirtley
County Counselor
Jackson County Courthouse
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your recent letter requesting an opinion from this office, which request reads as follows:

"Jackson County, Missouri is in receipt of a letter from the State Tax Commission of Missouri advising that a ten percent increase in the assessment of all real estate in this County is required for the calendar year 1956.

"In considering the consequences of such action, attention is necessarily directed to the provisions of Section 137.073 enacted in 1955 by the 68th General Assembly. With respect to the interpretation and effect of that section, I respectfully submit to you for your opinion the following questions:

"1. Assuming that the increase of ten percent or more in assessed valuation is made by the county assessor or after action by the County Board of Equalization prior to August 10, 1956 (the date when the final tax levy must be made in Jackson County pursuant to the provisions of Section 137.390, R.S. Mo. 1949), do the provisions of such section for a mandatory reduction in the tax rate apply?

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"2. Section 137.073 requiring immediate revision of the tax levy apparently conflicts with Section 137.390 which requires the final levy to be made on or before August 10th of each year. Does Section 137.073 repeal inferentially Section 137.390?

"3. Section 137.073 apparently conflicts with Section 138.340, R. S. Mo. 1949, which vests in the County Court the sole authority to set the tax rates within the constitutional limitation. Does the 1955 Act repeal the former Act? * * *"

The facts in your request presuppose that the increase of ten per cent or more in the assessed valuation of Jackson County will be made before the tax levy is finally fixed by the county court. Section 137.390 RSMo 1949 provides that such final determination of the tax levy shall be made not later than August 10th of each year. This statute reads:

"After the assessor's book shall be corrected and adjusted according to law, but not later than August tenth of each year, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same shall be entered in proper columns in the tax book."

You state that the State Tax Commission has advised that it will be necessary for Jackson County to increase the assessment of real estate in the calendar year 1956. Under the statutory procedure if such increase is not made by the local officials the State Tax Commission, under Section 138.390, RSMo 1949, is authorized and required to equalize the valuation of each class of property among the respective counties, and under Section 138.400 RSMo 1949, notice of such equalization must be given before the second Monday in July of each year. Thus, under this procedure notice of such equalization must be given before the last date upon which the county court shall finally fix the rate of levy.

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Section 137.073 RSMo Cumulative Supplement 1955, operates only where the assessed valuation has been increased by ten per cent or more and such increase is made after the rate of levy has been determined and levied by the county court. Thus, where the increase occurs before the levy is made by the county court the provisions of Section 137.073 are not operative and no problem is raised. This for the simple reason that under Section 137.390, RSMo 1949, the county court fixes the rate of tax so as to raise the required sum of money, and when such rate is fixed upon the increased valuation it is the contemplation of the law that the rate will be fixed as directed, based upon the increased valuation so as to raise the required sum.

In answer to the second question propounded in your request it would seem obvious from the above discussion that Section 137.390, RSMo 1949, is not in any manner repealed by Section 137.073 RSMo Cumulative Supplement 1955, since the latter section is operative only when an increase in assessment occurs after the tax levy has been made and then allows the county court to adjust such levy on the basis of the new assessed valuation so as again to produce only the required sum as is expressly provided in Section 137.390, RSMo 1949.

As to the third question which you ask, Section 138.340, RSMo 1949, provides as follows:

"1. The commission shall have no power to fix the rate of levy for the state or any political or municipal subdivision thereof, nor shall the commission have any power or authority to supervise the fixing of any tax levied or to be levied.

"2. County courts, city councils, school boards, and all other bodies legally authorized to make levies, shall be and remain free to make the rate of levy for their respective local political subdivisions or municipalities at any figure not prohibited by the constitution or laws of the state."

It will be noted that this section deals with the fixing of the rate of levy, not with the amount of assessment. Thus, the action of the State Tax Commission in requiring an increase

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of assessment cannot in any way conflict with the provisions of Section 138.340, RSMo 1949. It should also be noted that the authority of the county court in fixing the rate of levy is limited to "any figure not prohibited by the constitution or laws of the state." Section 137.073 RSMo Cumulative Supplement 1955 does not in any manner attempt to limit the discretion and judgment of the county court in fixing the rate of levy; it operates only when the assessment has been increased by ten per cent or more after the rate of levy has been finally determined and it operates to require the county court to determine (on the basis of the increased assessment) the rate of levy necessary to produce from all taxable property substantially the same amount of taxes as previously estimated to be produced by the original levy. There is, therefore, no conflict between the provisions of these two sections, and obviously there is no repeal of one by the other.

CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that the provisions of Section 137.073 RSMo Cumulative Supplement 1955, are operative only when the assessed valuation of the county is increased after the county court has made its final determination of the tax levy and would have no effect whatever in the situation which you mention. The provisions of Section 137.073 RSMo Cumulative Supplement 1955, are not in conflict and do not in any way repeal the provisions of Section 137.390 RSMo 1949 and Section 138.340 RSMo 1949.

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

Yours very truly,

John M. Dalton
Attorney General

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