

COUNTY BOARD OF
EQUALIZATION:
STATE TAX COMMISSION:
TAXATION:

In the event a county board of equalization raises the assessed valuation of properties within the county, notice of such action should be given to the person owning or controlling the property affected, in person or by mail, if the address is known, and valid notice by publication can only be effected where the address of such person or persons is unknown. Further, in performing their duties in regard to intracounty equalization, the county board of equalization must maintain the aggregate assessed valuation as previously fixed and determined by the state tax commission.

July 12, 1956

Honorable Ernest "Jack" Troutman
Prosecuting Attorney
Carroll County
Carrollton, Missouri



Dear Mr. Troutman:

Reference is made to your request for an official opinion of this office. You state that the State Tax Commission has ordered a thirty-five per cent increase in the aggregate assessed valuation of town lots in Carroll County, and inquire as follows:

- "1. Can the Carroll County Board of Equalization place advertisements in newspapers throughout the County to acquaint the owners of town lots of the 35% raise in assessments, and comply with the law thereby?
- "2. If this cannot be done, must each owner of a town lot be contacted by mail individually? (and I am informed it is impossible for 100% notification by this method.)
- "3. Can the Carroll County Board of Equalization legally and lawfully refuse to comply with the directive to raise the assessments?
- "4. In the event the said Board of Equalization does refuse to comply with the directive, can they be forced to do so by the State Tax Commission and by what method could they be forced?"

You first inquire whether notice of increased assessments may be effectuated by placing advertisements in newspapers throughout the county.

Your attention is invited to Section 138.050 RSMo 1949, which section provides in part as follows:

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"They shall raise the valuation of all tracts or parcels of land and all tangible personal property as in their opinion have been returned below their real value; but, after the board has raised the valuation of such property, it shall give notice of the fact, specifying the property and the amount raised, to the persons owning or controlling the same, by personal notice, or through the mail if address is known, or if address is unknown, by notice in one issue of any newspaper published within the county at least once a week, and that said board shall meet on the second Monday in August, to hear reasons, if any be given, why such increase should not be made; the board shall meet on the second Monday in August in each year to hear any person relating to any such increase in valuation; * * *".

It should be noted that said section provides for the giving of notice of an increased assessment to the person owning or controlling the property affected, by personal notice or through the mail, if address is known, and it is only where the address is unknown that publication of notice is permitted.

It has been held that notice, as the law directs, preliminary to an increase of a tax assessment, is essential to the validity of the assessment. State ex rel. Harrison County Bank v. Springer, 134 Mo. 212.

It therefore is the opinion of this office that where the address of the person owning or controlling property, in regard to which the assessed valuation has been increased, is known, notice of such increase can only be effected in person or by mail.

The answer to question No. 1 also disposes of question No. 2.

You next inquire whether the county board of equalization can legally and lawfully refuse to comply with the directive to raise the aggregate valuation of town lots. Section 138.030, RSMo 1949, relating to the powers and duties of county board of equalization, provides that in carrying out their duties in regard to intracounty equalization they shall not reduce the valuation of the real property of the county below the value thereof as fixed by the State Tax Commission. Said provision reads more fully as follows:

"* * * 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."

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The question of the proper interpretation of this section has been before the Supreme Court of Missouri on several different occasions. In the case of State v. Bethards, 9 SW2d 603, 1.c. 605, the court said:

"* * * Therefore the county board of equalization of Shelby county had no authority to reduce the valuation fixed by the state board. When it attempted to equalize the values in accordance with the prior valuations fixed by the assessor, which valuations had been annulled by the order of the state board of equalization, the proceeding was a nullity. The entire proceeding of the county board in the matter was of no effect.* * *"

In the case of State v. Dirckx, 11 SW2d 39, 1.c. 41, the court said:

"* * * And when the state board in the discharge of this statutory function has determined and fixed the valuation of a class of property, the county board can neither increase nor reduce it. The principles determining this construction are so fully set forth in Mercantile Trust Co. v. Schramm, 269 Mo. 489, 190 S.W. 836, that a further elaboration of them is unnecessary. What the Cole county board of equalization did was to reduce the aggregate valuation of the class of property designated as 'banking corporations' 30 per cent. in order to equalize it with the valuations of other classes of property in Cole County; this it had no power to do, because it is perfectly obvious that the county board could not equalize valuations as between classes of property without changing the aggregate valuations thereof as fixed by the state board. The county board's authority is limited to equalizing valuations of property within a class. If it finds one piece of property within a class overvalued, it follows as a necessary implication that the remaining property in the class, or at least some of it, is undervalued. This for the reason that the valuation of the whole as a class, is fixed by the state board and that cannot be changed. A reduction of the valuation of one or more pieces of property therefore requires a corresponding increase of the valuation of some or all of the remaining property in the class."

In view of the foregoing-cited and noted statutory and case authorities, it is the opinion of this office that the county board of equalization cannot legally and lawfully disregard the aggregate valuation

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of a class of property as fixed and determined by the state tax commission, but that in disregarding their duties in regard to intracounty equalization said aggregate valuation must be maintained.

We do not deem it either pertinent or necessary at this time to answer question No. 4. Further, said inquiry relates primarily to the duties of the state tax commission and to this office, in the event of litigation, rather than the duties of your office.

CONCLUSION

Therefore, it is the opinion of this office that, in the event a county board of equalization raises the assessed valuation of properties within the county, notice of such action should be given to the person owning or controlling the property affected, in person or by mail if the address is known, and that valid notice by publication can only be effected where the address of such person or persons is unknown.

It is the further opinion of this office that in performing their duties in regard to intracounty equalization, the county board of equalization must maintain the aggregate assessed valuation as previously fixed and determined by the state tax commission.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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