

COUNTY BOARD OF EQUALIZATION: It is the opinion of this department that in a county in which there is no county surveyor that the county board of equalization may nonetheless function.



June 27, 1958

Honorable Charles E. Murrell, Jr.
Prosecuting Attorney
Knox County
Edina, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Section 138.010 R.S.Mo. 1949, provides for a county board of equalization consisting of certain county officers, including the county surveyor. Knox County does not have a county surveyor and apparently does not have any one qualified for the job who will take the same.

"I would like to have an opinion of your office as to whether or not a county board of equalization consisting of the county officers with the exception of a county surveyor is a legally constituted board to perform the duties of a county board of equalization?

"Since the board must meet the second Monday of July, your opinion would be appreciated as soon as possible."

Section 138.040, RSMo 1949, reads:

"1. The county board of equalization shall have power to compel the attendance of witnesses and the production

Honorable Charles E. Marrell, Jr.

of necessary papers and records in relation to any appeal before them, and it shall be the duty of the sheriff of the county to execute such process as may be issued to this end.

"2. A majority of said board shall constitute a quorum, and a majority of the members present shall determine all matters of appeal or revision."

It will be noted that numbered paragraph 2 holds that a majority of the board constitutes a quorum. This means that although the county surveyor was a member of the board, but never attended a meeting, that the board could transact its business without his presence. In the instant case the position on the board which would normally be filled by the county surveyor is vacant because there is no such officer in your county. The question to be determined is whether such vacancy nullifies or makes inoperative any action taken by the board of equalization.

Our research regarding this matter has not been as productive as we would desire. The only case which we have been able to find which bears upon this point is not strictly analogous. However, we do believe that it sets forth the principle of law which is applicable here. In the case of Bauer vs. School District, 78 Mo. App. 442, the Kansas City Court of Appeals was considering a situation in which the board of directors of a school district had issued a bond for \$600. At l.c. 444, the court stated:

"The first point made against the bond is that there was a vacancy in the board when the renewal bond was issued and that while said vacancy existed no business could be transacted by the board under the provisions of section 7991, Revised Statutes 1889. That section reads as follows: 'If a vacancy occur in the office of director, by death,

Honorable Charles E. Murrell, Jr.

resignation, refusal to serve, repeated neglect of duty or removal from the district, the remaining directors shall, before transacting any official business, appoint some suitable person to fill such vacancy; but should they be unable to agree, or should there be more than one vacancy at any one time, the county commissioner shall, upon notice of such vacancy or vacancies being filed with him in writing, immediately fill the same by appointment, and notify said person or persons in writing of such appointment; and the person or persons appointed under the provisions of this section shall comply with the requirements of section 7989, and shall serve until the next annual school meeting.'

"In our opinion a failure on the part of the directors to fill the vacancy as they are required to do by this statute, does not invalidate any official action taken by the board. The command of the statute is addressed to the remaining members of the board and no intention seems to be disclosed to make void any act done while the vacancy exists. If such had been the intention of the lawmakers on a matter so important, they would undoubtedly have expressed the intention in direct terms. The directors should obey the statute before performing any other official act. It may be that they could, by proper proceedings, taken in time, be compelled to do so. But if the board engages in its duties while the vacancy exists, the business transacted if otherwise regularly done, will not be void."

Honorable Charles E. Murrell, Jr.

We are further persuaded of the correctness of our position by the fact that numbered paragraph 2 of Section 138.040, supra, states that a majority of the board shall constitute a quorum. This carries the inference that a quorum may transact business, and we note the fact that such is the case.

We note also that a county board of equalization performs an extremely important function in the county; in your county the position of county surveyor is not and cannot be filled; if the absence of the surveyor from the board renders its actions a nullity and makes it inoperative then your county would be without a board of equalization, and we cannot believe that such is the intention of the law.

CONCLUSION

It is the opinion of this department that in a county in which there is no county surveyor that the county board of equalization may nonetheless function.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

hpw;mjb:lc