

June 9, 1965



Honorable Frank Conley
Prosecuting Attorney of Boone County
Court House
Columbia, Missouri

Dear Frank:

Your inquiry (as restated by this office) whether the county court may pay from the county treasury salaries for stenographic assistance in excess of \$1200.00 (as limited by Section 53.095, V.A.M.S.) where such services are required by the county assessor to prepare notices of increased valuations and/or assessments pursuant to Section 137.138, V.A.M.S. and citing subparagraph 2, Section 137.230, V.A.M.S. has been carefully considered by this office.

Section 137.230, V.A.M.S. when reduced to its effective minimum terms is interpreted by this office to read as follows:

2. "In all counties the county court may, in addition to the foregoing provisions for securing a full and accurate assessment * * * or in lieu thereof, by order * * *, adopt * * * any other suitable and efficient means or method * * * whether by procuring maps, plats or abstracts of titles * * * and may require the assessor * * * to carry out the same and may provide the means for paying therefor out of the county treasury."

The legislature has by this statute created a "means or method" that the county court may employ, in its discretion, to discover property in the county which has escaped its fair

share of taxation. It is limited to being a discovery device the court may employ to attain a specific goal, viz, the location of untaxed property. When the means or method has for its purpose this declared object, then the county court is authorized to expend additional monies from the county treasury for that limited purpose only.

Consideration of the case law sustains this posture of the office on this statute. In an earlier statute involving the predecessor of the present Section 137.230, V.A.M.S. was considered in the case of State ex rel and to Use of Tadlock v. Mooneyham, 212 Mo. App. 573, 253 S.W. 1098 and the Court set out the statute:

Section 12797. "Nothing in the preceding five sections shall be construed to apply to counties which have already adopted a method of plats and abstracts to facilitate the assessment and collection of the revenue; nor shall the provisions of the preceding five sections apply to counties having a less population than forty thousand, unless a majority of the voters in any such county shall elect to adopt its provisions at a general election upon the question being ordered to be submitted by the county court: Provided, that in counties having a population of over forty thousand the county court may, in addition to the foregoing provisions for securing a full and accurate assessment of all property therein liable for taxation, or in lieu thereof, by order entered of record, adopt for the whole or any designated part of such county any other suitable and efficient means or method to the same end, whether by procuring maps, plats or abstracts of titles of the lands in such county or designated part thereof or otherwise, and may require the assessor, or any other officer, agent or employee of the county to carry out the same, and may provide the means for paying therefor out of the county treasury."

"* * * The Legislature evidently understood that in the larger counties the opportunity for concealing wealth from taxation would be much greater than in the smaller counties, and they evidently intended by the provisions of the statute aforesaid to put it in the power of the county court in those counties to ferret out property that was being withheld from assessment and place it upon the tax books of the county, so that it should bear its proportion of the burdens of taxation."

This interpretation was later affirmed in *Hellman v. St. Louis County, Mo.*, 302 S.W.2d 911 when the court cited Section 137.230 and held, l.c. 915, 916:

"More directly bearing upon the precise question here involved is Section 137.230 of the statutes, the pertinent portion of which reads: '* * * provided, that in counties having a population of over forty thousand the county court may, in addition to the foregoing provisions for securing a full and accurate assessment of all property therein liable to taxation, or in lieu thereof, by order entered of record, adopt for the whole or any designated part of such county any other suitable and efficient means or method to the same end, whether by procuring maps, plats or abstracts of titles of the lands in such county or designated part thereof or otherwise, and may require the assessor, or any other officer, agent or employee of the county to carry out the same, and may provide the means for paying therefor out of the county treasury.

"[3,4] That provision was considered at length by the Springfield Court of Appeals in *State ex rel. and to use of Tadlock v. Mooneyham*, 212 Mo.App. 573, 253 S.W. 1098, and was held to be an express grant of power for the purposes therein stated. It seems clearly to authorize contracts such as are here involved. But, in any event, it definitely amounts to a declaration of public policy that the county courts of counties of more than 40,000 population may adopt suitable and efficient means or agencies to procure an accurate assessment of all or any portion of taxable property in their counties and pay for such services out of the county treasury. * * *" (Emphasis supplied)

Thus, the courts have held that the purpose of Section 137.230, V.A.M.S. is to furnish a means or method to "ferret out" taxable property which may have escaped its legitimate burden of taxation. Of course, all such necessary expenses and costs incident to such means or methods but limited to that purpose are payable from the county treasury.

In your specific case, however, there is an apparent difference between the clear object of Section 137.230 and what is here to be done by the county court. In the instant case, the county court desires to make an additional grant to send out notices required by statute. The property has been discovered, so to speak, and the county court now desires to

expend funds from the county treasury, apparently in excess of \$1200.00 per annum as authorized by Section 53.095, V.A.M.S., to notify property owners of the increased valuations and/or assessments pursuant to Section 137.138 V.A.M.S.

A plain reading of Section 53.095 V.A.M.S. places the statutory limit on the amount which the county court may authorize for payment from the county treasury of clerical and/or stenographic assistance in the assessor's office. As a third class county, Boone County has a maximum limit of \$1200.00 per annum.

Section 53.095, V.A.M.S. was first enacted in 1951; later amended by law 1959, H.B.87 §1. This office believes it should be read:

"The county assessor (in a third class county) may appoint and fix the compensation of such clerical and stenographic assistants * * *. The compensation * * * shall be paid from the county treasury subject to approval of the county court and shall not exceed \$1200 per annum in counties of class three * * *."

The words "shall not" are words of limitation. In construing those words and applying Sec. 1.090, V.A.M.S. to the effect that words and phrases shall be taken in their plain or ordinary and usual sense, one is compelled to accept the proposition the county court may only grant a sum from the county treasury not in excess of \$1200 per annum for clerical or stenographic assistance in the office of the assessor. Indeed, a clear conflict would result if any other interpretation were applied. As was said by the Supreme Court in *State ex rel. St. Louis Die Casting Corp. v. Morris* (1949), 358 Mo. 1170, 219 S.W.2d 359, 362:

"It has been said many times it is elementary in construing statutes that, if possible, effect must be given to every word, clause, sentence, paragraph, and section of a statute so that one section, or part, will not contradict, conflict with or destroy another; and it is presumed the legislature intended every part and section of a law to have effect and be operative. *Graves v. Little Tarkio Drainage Dist.* No. 1, 345 Mo. 557, 569, 134 S.W.2d 70, 78 [9, 11]; *State ex rel. Dean v. Daues*, 321 Mo. 1126, 1151, 14 S.W.2d 990, 1002; *Castilo v. State Highway Comm.*, 312 Mo. 244, 279 S.W. 673, 676 [4, 5]; *State ex rel. and to use of Public Service Comm. v. Padberg*, 346 Mo. 1133, 145 S.W.2d 150, 151 [5]."

Any other construction than that presented above would create a direct conflict. The interpretation herewith suggested is not only harmonious but reasonable in the opinion of this office.

Prior to 1951, the payment of assessors and assistance to include clerical assistance was accomplished by fees charged and collected. The Supreme Court en banc in *Buder v. Hackmann*, 305 Mo. 342, 265 S.W. 532, stated that:

"The main controversy centers around relator's (assessor's) claim for clerk hire, * * *. Section 13124 provides assessors (of St. Louis) shall be compensated in like manner * * *, and is fixed by Section 12816, as amended by Laws 1921, page 671.

"* * * Section 13124 provides that assessors shall be compensated in like manner and in like amounts as for assessment of other taxes. Their compensation for assessment of other taxes is fixed by section 12816, as amended by Laws of 1921, p. 671. Such compensation is in lieu of salary, except where a salary is provided by law. In that case the salary provided for is in lieu of fees. Section 12762 provides that the assessor may appoint as many deputies as he needs, 'to be paid out of the fees allowed to such assessor.' It is therefore the plain purpose of the statute, where the assessor is compensated upon the fee basis, that he shall pay out of such fees all of the salaries of deputies (including clerks) in making such assessments. Section 13124 provides that he shall be compensated in the same manner for making and receiving income tax returns. There is therefore no escape from the conclusion that the assessor must pay salaries of all necessary deputies and clerks out of the fees allowed him for taking and receiving income tax returns. The 'actual necessary expenses' provided for do not include salaries of any character. The clear meaning of sections 13116 and 13124 is that the assessor, in addition to the fees allowed by law, shall be entitled to have furnished to him, without deduction from such fees, all his necessary printing, stationery, postage, and office equipment, and that he shall be reimbursed for all outlays made by himself and his deputies by way of expenses in doing the work, for the doing of which work he and they are fully paid out of the fees allowed by law.

"[2, 3] Before the state can be held liable for the payment of a fee or expense incurred in its behalf, the person or officer claiming such fee or expense must be able to point out the law authorizing such payment. Williams v. Chariton County, 85 Mo. 645; State ex rel. v. Wilder,

197 Mo. loc. cit. 32, 94 S.W. 499; Sanderson v. Pike Co., 195 Mo. loc. cit. 605, 93 S.W. 942 * * *."

"* * * The argument of hardship, and that an officer should not be compelled to incur a financial loss, in performing the duties incident to his office, cannot be considered by the courts in passing upon the rights of relator, as fixed by the statute. Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty. State ex rel. v. Brown, 146 Mo. loc. cit. 406, 47 S.W. 504. It may be that an assessor actually sustains a financial loss in the performance of his duties under our state Income Tax Law. But such fact is for consideration by the Legislature and not by the courts. In view of what we regard as the plain provision of the statute that clerk or deputy hire shall be paid by the assessor out of the fees received by him, the cases of Ewing v. Vernon Co., 216 Mo. 681, 116 S.W. 518, and Harkreader v. Vernon Co., 216 Mo. 696, 116 S.W. 523, cited and relied upon by relator, need not be discussed."

In 1951, the present Section 53.095 was enacted (as amended by Law 1959, H.B. 87, Section 1) to provide for clerical and stenographic assistance and as stated in the Buder case:

"[2,3] Before the state can be held liable for the payment of a fee or expense incurred in its behalf, the person or officer claiming such fee or expense must be able to point out the law authorizing such payment. * * *"

None exists authorizing payment of monies from the county treasurer in excess of \$1200.00 in the opinion of this Office.

While it is apparent there may be expenses incurred by the county assessor of Boone County for stenographic assistance in excess of that allowed by statute "failure to provide the salary or fee for a duty imposed upon an officer by law does not excuse his performance of duty." The fact (of such loss falling upon the assessor) is for the consideration by the legislature and not by the courts (Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532).

CONCLUSION

(1) It is the opinion of this Office that the maximum amount that the county court may pay from the county treasury for salaries of clerical and stenographic assistance cannot exceed the sum of \$600.00 in fourth-class counties and \$1200.00 in third-class counties.

(2) Section 137.230, V.A.M.S. furnishes a "means or method" whereby counties may employ appropriate persons or agencies to ferret out taxable property which may have escaped legitimate taxation by remapping, replatting or similar means. All necessary expenses (whether under contract or not) incident but limited to this purpose including stenographic assistance may be paid from the county treasury.

(3) Notwithstanding the requirement of Section 137.230 that the county assessor notify real estate owners of increased valuation and/or assessment in writing, such statutory obligation does not allow the county court to pay from the county treasury a sum in excess of \$1200.00 for clerical and/or stenographic help in the assessor's office of third-class counties even though the county assessor may incur expenses for clerical and/or stenographic assistance in excess of that amount.

The foregoing opinion, which I hereby approve, was prepared by my assistant, R. C. Ashby.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

RCA:lvd