PROSECUTING ATTORNEYS: SALARIES: Since the assessed valuation of DeKalb County was determined to be more than $20,000,000 by the State Tax Commission in its complete report dated December 31, 1966, the Prosecuting Attorney of DeKalb County is entitled to the compensation authorized by Section 56.291, RSMo Cum. Supp. 1965, for counties with an assessed valuation of more than $20,000,000 for services performed on or after January 1, 1967.

OPINION NO. 17
NO. 63 (1967)

January 25, 1968

FILED
17

Honorable Robert B. Paden
Prosecuting Attorney
DeKalb County
Maysville, Missouri 64469

Dear Mr. Paden:

This is in answer to your request for an opinion on the question of when the compensation granted the Prosecuting Attorney of DeKalb County, under Section 56.291, RSMo Cum. Supp. 1965, (for counties with a valuation of more than $20,000,000) becomes effective inasmuch as the assessed valuation of the county changed from under $20,000,000 for the year 1965, to over $20,000,000 for the year 1966.

Section 56.291, RSMo Cum. Supp. 1965, provides:

> "The prosecuting attorney in counties of the third and fourth class, in addition to his other duties provided by law, shall submit to the attorney general of the state of Missouri, a written brief summarizing the facts and law of the lower court proceedings had in all criminal cases appealed to the supreme court from the county of his jurisdiction and as compensation shall receive in addition to the compensation provided by law, in third class counties having an assessed valuation of more than forty million dollars, the sum of three thousand two hundred dollars; in third class counties having an assessed valuation of thirty million dollars and less than forty million dollars, the sum of two thousand six hundred dollars; in third class counties having an assessed valuation of twenty million dollars and less than thirty million dollars, the sum of two thousand dollars; * * * to be paid monthly in the same manner as the prosecuting attorney's compensation. * * * "

The Twenty-first Annual Report of the Missouri State Tax Commission for the year 1966, shows on page 345 that the total assessed valuation for DeKalb County for 1966, was $20,327, 248. This report of the Commission is dated December 31, 1966. Your question, then, is whether the additional compensation authorized by Section 56.291 because DeKalb County increased its valuation to more than $20,000,000 becomes effective on January 1, 1966, as of the date the assessed valuation was made for certain taxes in 1966; or, whether the additional compensation becomes effective after December 31, 1966, when the assessed valuation of the county was publicly announced by the State Tax Commission.

It is clear from Section 56.291 that the additional compensation is keyed to the assessed valuation. That is to say, the right to additional compensation is conditioned upon the existence of the assessed valuation of more than $20,000,000 as a fact. Accordingly, the prosecuting attorney has no enforceable right to additional compensation, and the county has no obligation to pay it before the assessed valuation of the county is ascertained with reasonable certainty.

Section 137.080, RSMo 1959, provides:

> "Real estate and tangible personal property shall be assessed annually at the assessment which commences on the first day of January."

In Long vs. City of Independence, 229 S.W. 2d 686, l.c. 689, the court quoted the foregoing statute and stated:

> "* * * The section deals with two matters: The 'official assessments' (the final results of one of the procedures in the taxation process), and that particular procedure itself (the assembling of the data upon which the official assessments are based). See Cooley on Taxation, 4th Ed., Vol. III, Sec. 1044. The General Assembly has enacted many laws outlining the entire taxing process, and prescribing the powers and duties of various officials and boards of the state, county, city and other subdivisions, relative to the assessment, levy and collection of taxes. Chap. 79, Mo.R.S.A. The result of this process, which commences January 1 and is not completed until months later, is the 'official assessment' as to each individual person or property unit."

The process relating to the assessment, levy and collection of merchants' and manufacturers' taxes pursuant to Chapter 150, RSMo 1959, commences on the first Monday in May of each year when each merchant and manufacturer must furnish the assessor a statement of the greatest amount of goods, wares and merchandise which he may have had on hand at any time between the first Monday in January and the first Monday in April next preceding. This process likewise is not completed until months later. However, with respect to the merchants' tax (Section 150.060) and again with respect to the manufacturers' tax (Section 150.330), the legislature has stated:

> " * * * the sum of the valuation of the statements as equalized by the county board of equalization shall be included in and made a part of a total valuation of property taxable for all purposes."

Inasmuch as the legislature has provided that the process for the assessment of such property cannot begin prior to the first Monday in May of each year, it is clear that the legislature did not intend that the additional compensation for prosecuting attorneys authorized by Section 56.291, should begin on January 1 of the year that the assessed valuation is determined.

In Cupples-Hesse Corporation vs. Bannister, 322 S.W. 2d 817, l.c. 823, the court states:

> "We think it important to note that defendant Assessor has the duty of assessing property each year (Section 137.080 RSMo 1949, V.A.M.S.), and that each year's assessment constitutes an independent proceeding and judgment. * * * Each year's tax is a separate transaction and each action relating to each year's tax is a new cause of action. In re Breuer's Income Tax, 354 Mo. 578, 190 S.W. 2d 248; Young Men's Christian Ass'n of St. Louis and St. Louis County v. Sestric, 362 Mo. 551, 242 S.W. 2d 497. * * * "

The decisions of the State Tax Commission are subject to judicial review. However, In Re St. Joseph Lead Company, 352 S.W. 2d 656, l.c. 664, the court pointed out that:

> " * * * (the circuit court had neither the power nor the authority to fix the valuation of the appellant's property, Koplar v. State Tax Commission (Mo.), 321 S.W. 2d, l.c. 697; Drey v. State Tax Commission (Mo.), 345 S.W. 2d, l.c. 238); * * * "

Section 138.440, RSMo Cum. Supp. 1965, provides in part as follows:

> "1. A report of the proceedings and decisions of the state tax commission shall be printed annually.
>
> 2. Such report shall contain a complete account of the work of the state tax commission, including its proceedings and decisions while acting as a board of equalization.
>
> 3. At least one thousand copies thereof shall be distributed to the members of the general assembly, officers of the state, and to others interested in just, equal and uniform taxation."

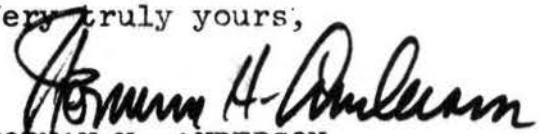
It appears, therefore, that the decision of the State Tax Commission relative to assessed valuation of DeKalb County for the year 1966 was final and conclusive when it was publicly announced in the complete report of the work of the Commission on December 31, 1966.

CONCLUSION

It is the opinion of this office that since the assessed valuation of DeKalb County was determined to be more than $20,000,000 by the State Tax Commission in its complete report dated December 31, 1966, the Prosecuting Attorney of DeKalb County is entitled to the compensation authorized by Section 56.291, RSMo Cum. Supp. 1965, for counties with an assessed valuation of more than $20,000,000 for services performed on or after January 1, 1967.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Very truly yours,



NORMAN H. ANDERSON
Attorney General