ASSESSORS:
TOWNSHIP ASSESSORS:
COUNTY COURT:
COMPENSATION:
FEES, COMPENSATIONS AND SALARIES:

The county court has the duty of paying the statutory fees as set out in Section 65.240, RSMo Supp. 1967, Section 65.245, RSMo 1959, and Section 261.070, RSMo 1959, to the township assessors and that the State Tax Commission has no authority to order the county court to withhold payments of such fees because the Tax Commission believes the property valuations of such assessors are too low.

OPINION NO. 196

May 14, 1968

FILED
196

Honorable Paul McGhee
Prosecuting Attorney of
Stoddard County
16 North Elm Street
Dexter, Missouri 63841

Dear Mr. McGhee:

We have your request for an opinion of this office which is as follows:

> "Stoddard County is a county of the third class having township organization, and therefore has township assessors. Such assessors are paid on a fee basis under the provisions of Section 65.240 and Section 65.245, R.S. Mo. 1959. It is also noted that there is a provision for compensation under Section 261.070. There has been some complaint on the part of the State Tax Commission that the assessed valuation for Stoddard County is too low. Some representatives of the State Tax Commission, and some members of the public, have urged the County Court to withhold payment to the township assessors of their statutory fees unless such assessors place valuations upon the property within their respective townships that meet with the approval of the State Tax Commission.
>
> I respectfully request your opinion as to whether the County Court has the authority to withhold from township assessors their statutory fees upon the basis that the township assessors are placing a valuation upon property that is too low to satisfy the State Tax Commission."

The pertinent provision of Section 65.240, RSMo Supp. 1967, is as follows:

> "The ex officio township assessor in each township, in counties of the third and fourth classes, which now or may hereafter have township organization, as compensation for his services, shall receive sixty-five cents for each list taken by him; and for each tract of land or town lot assessed by him, and properly entered in the township land book, he shall receive ten cents; and for each entry in the tangible personal property tax book, he shall receive five cents; one-half to be paid by the county and one-half by the state, as now provided by law. . . ."

There is no duty in said section, for the assessor to be paid such fees, other than that he shall take a list, assess real and tangible personal property and enter such assessments in the proper tax books.

Section 65.245, RSMo 1959, is as follows:

> "The ex officio township assessor in each township, in counties of the third and fourth classes, which now or may hereafter have township organization shall receive for visiting the establishments of each merchant and manufacturer as required by sections 150.055 and 150.325, RSMo, a fee of forty-five cents, and for making each report required by sections 150.060 and 150.330, RSMo, a fee of six cents; provided, that one-half of the compensation provided in this section shall be paid out of the county treasury and the other one-half out of the state treasury."

There is no duty for the assessor being paid such fees, other than visiting the establishments, required by Sections 150.055 and 150.325, RSMo 1959, of merchants and manufacturers and making each report required by Section 150.060, RSMo 1959, and Section 150.330, RSMo 1959.

The pertinent part of Section 261.070, RSMo 1959, paragraph two is as follows:

> "2. The assessor shall receive for such additional assessment service as required in this section an additional fee of ten cents for each individual statistical listing of land acreage and other accompanying agricultural statistics filed by him with the commissioner of agriculture, ..." (Emphasis added).

This statute has been construed in State v. Woods, 296 S.W. 381, l.c. 382,

> ". . . Whether the statute in that respect is effective, valid, or constitutional is of no concern whatever to the county assessor. State v. Williams, 232 Mo. 56, 133 S.W. 1. It is clearly valid as to him. His duties in the premises are clearly and definitely prescribed. . . ."

With regard to your specific question which is as follows:

> "I respectfully request your opinion as to whether the County Court has the authority to withhold from township assessors their statutory fees upon the basis that the township assessors are placing a valuation upon property that is too low to satisfy the State Tax Commission."

The pertinent part of Section 50.160, RSMo 1959 is:

> "The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts; . . ." (Emphasis added).

The Supreme Court in Jackson County vs. Fayman, 44 S.W.2d 849, discusses at length the duties and powers of the county courts with regard to auditing and paying claims presented to them, and it says at l.c. 852,

> "The power and authority of county courts and the capacity in which such body acts in auditing and paying claims against the county has been before this court for decision many times. We think that it is now well set-

> tled that county courts do not act judicially in allowing, adjusting, or refusing claims presented against the county, or necessarily arising from managing its financial affairs. While such body does not act in a purely ministerial capacity in such matters, in the sense that they act without investigation and have no discretion in the matter, yet they do not try the merits of the claim as a court, but rather act as auditing financial agents of the county whose action is not final in the sense that a judgment of the court is final except on appeal or by other appropriate remedy."

The Court further says at l.c. 853,

> "'It has been held by this court, through an unbroken line of decisions since the case of Marion County v. Phillips, 45 Mo. 75, that the action of the county court in making settlements with county officials is not judicial, but that, in such cases, the judges act merely as the fiscal or administrative agents of the counties. State v. Roberts, 60 Mo. 402; State v. Roberts, 62 Mo. 388; Cole County v. Dallmeyer, 101 Mo. 57, 13 S.W. 687; State v. McGonigle, 101 Mo. 353, 13 S.W. 758 [8 L. R. A. 735, 20 Am. St. Rep. 609]. . . .'
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> * * * * * *
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> This case has not been overruled, but approved many times, and the same doctrine was restated in State ex rel. v. Diemer, 255 Mo. 336, 351, 164 S.W. 517, 521, in this language: 'In the allowance of claims against a county, or in settling with county officers, county courts do not act so strictly as a court, or in the performance of a judicial function, and their allowance or disallowance of a claim is res adjudicata. . . .'"

The case discussed and referred to with approval by the Supreme Court in Perkins v. Burks, 78 S.W.2d 845, refers and says,

> ". . . For a discussion of the powers and duties of the county court in auditing and settling demands against the county, see Jackson County v. Fayman, 329 Mo. 423, 44 S.W.(2d) 849. . . ."

The court further says at l.c. 848,

> "In the Rose Case, (State ex rel. Mitchell v. Rose, 313 Mo. 369, 281 S.W. 396, 398), however, the question was not concerning a **salary** fixed in amount by law, but mandamus was there brought to compel payment of a bill of the local registrar of vital statistics of the state board of health whose pay was provided by statute as 25 cents for each birth and death certificate. This necessarily raised a fact question, namely, the actual number of births and deaths occurring and the computation of the total amount due therefor. This court held that the county court had the right and the duty to audit the claim to determine its correctness and, in case of a disagreement about it, to demand that the matter should be decided by the courts either by the suit against the county or by a continuation of the matter before it by the **appeal** method provided by statute. . . ."

It is quite apparent that the court found that the County Court should only decide a fact question, the actual number of births and deaths and that they should compute the total amount due therefore.

In Coleman v. Kansas City, Mo., 173 S.W.2d 572, the Supreme Court discusses the rights of a public officer to be entitled to payment for his services, while the public officer in question in this case was an official of Kansas City, Missouri, the question as to whether or not he had performed his duty and was thus entitled to compensation arose and the Court therein stated as follows at l.c. 577,

> "During the time Murray held the office, he is entitled to the salary fixed by law as an incident to that office. 'Compensation to a public officer is a matter of statute, not of contract; and it does not depend upon the amount or value of services performed,

> but is incidental to the office.' State ex rel. Evans v. Gordon, 245 Mo. 12, loc. cit 27, 149 S.W. 638, loc cit. 741. Also, see State ex rel. Chapman v. Walbridge, 153 Mo. 194, 54 S.W. 447. State ex rel. Vail v. Clark, 52 Mo. 508."

From the foregoing statutes and cases, supra, the county court audits, settles and adjusts all accounts and it orders warrants issued by the county clerk for the payment of accounts presented to it for payment. It will be noted that the power of the county court extends to all such accounts and, there is no provision in any of the statutes, supra, that authorizes the State Tax Commission to audit, settle and adjust accounts of a county. We believe that the only powers that the county court has in auditing the demands of township assessors for compensation in making out assessment lists, is to determine the actual number of lists made out by the township assessors.

Any action that the State Tax Commission might take in instructing and advising the county court to refuse to pay the assessor for duties performed as aforesaid pursuant to Sections 65.240, RSMo Supp. 1967, 65.245, RSMo 1959, and 261.070, RSMo 1959, is not provided for or authorized by reason that the township assessors are placing a valuation upon property that is too low to satisfy the State Tax Commission. Section 137.480, RSMo 1959, is as follows:

> "It shall be the duty of the state tax commission to make out and forward to the county clerks of the several counties that have or may hereafter adopt township organizations for the use of such county clerks and other officers, suitable forms and instructions relating to the discharge of their duties; and all such instruction shall be strictly complied with by said officers; . . ." (Emphasis added).

This section limits the State Tax Commission's duty to forwarding suitable forms and instructions to county clerks and other officers.

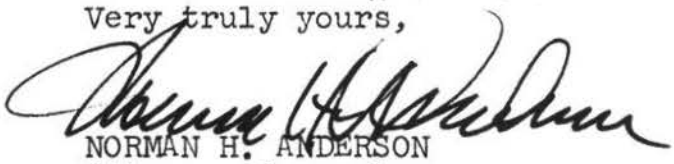
The State Tax Commission does not have the implied or expressed duty to cause or order the county court to withhold from the township assessors their statutory fees, by reason of valuations for assessment purposes, that are too low to satisfy the Commission.

CONCLUSION

It is therefore the opinion of this office that the county court has the duty of paying the statutory fees as set out in Section 65.240, RSMo Supp. 1967, Section 65.245, RSMo 1959, and Section 261.070, RSMo 1959, to the township assessors and that the State Tax Commission has no authority to order the county court to withhold payments of such fees because the Tax Commission believes the property valuations of such assessors are too low.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Arnold Brannock.

Very truly yours,



NORMAN H. ANDERSON
Attorney General