February 3, 1969

OPINION NO. 15
Answered by letter
Culver

Honorable Don Witt
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Mr. Witt:

This is in answer to your request for an opinion of this office on two questions concerning the county assessor of a third class county. The first question is as follows:

"On page 3-7 the audit discusses the accounts of Francis M. Bell, Assessor. This in turn refers to pages 46, 46-1, and 46-2. In substance, it would appear that in some years Mr. Bell overcharged the state and county for the number of lists compiled by him and in other years he undercharged the state and county. From September 1, 1957 to August 31, 1958 the amount of the undercharge was $154.61. From September 1, 1958 to August 31, 1959 the amount of the overcharge was $130.37. From September 1, 1959 to August 31, 1960 the amount of the overcharge was $325.78. From September 1, 1960 to August 31, 1961 the amount of the overcharge was $310.53. From September 1, 1961 to August 31, 1962 the amount of the undercharge was $392.21. During all the five years, this resulted in a net $219.66 overcharge. As we understand it, $187.34 was payment from the state and the county has issued a certificate of accuracy of the treasurer's account. The additional $112.32 involves the county. The first question we wish to ask is whether or not Mr. Bell is liable for this amount, and if so, what procedure should be used in order to clarify the records in this matter. Mr. Bell has expressed a willingness and is ready to pay
whatever amount is determined to be owing
to the county by him, but in view of the
many different statutes involved, we would
appreciate knowing the exact procedure to
be followed in this situation."

The second question reads:

"On page 45-A appears that for the period
of September 1, 1958 to August 31, 1959
there was an overpayment of clerical com-
pensation in the amount of $35.00 and from
September 1, 1959 to August 31, 1960 an
overpayment of clerical compensation in
the amount of $585.00. These amounts were
not paid to the assessor but were paid by
the county to the assessor's employees after
he requisitioned these amounts. There may
have been some confusion as to the exact
amount allowable because of a statutory
change in the amount of compensation al-
lowed for such clerical assistance. This
matter appears to have been clarified in
subsequent years, and occurred only in the
periods mentioned. The question is whether
or not the assessor is liable to the county
for such amounts paid as clerical compen-
sation, and what procedure should be used to
correct the records of the county should he
be liable. Again, Mr. Bell is able and
willing to pay any amount due to the state
and county because of this overpayment of
clerical assistance."

Regarding your second question insofar as the assessor's
liability for excess payments to his assistants, since they are
paid by the county court we do not believe the assessor himself
is liable therefore. Section 53.095, Rev. 1959.

Regarding both questions, they basically seem to be whether
or not without any formal court action, the county court and the
private individuals involved could agree upon a settlement
amount to be paid to the county and dispose of this matter, in
view of the various over- and under-payments revealed by the
audit. We believe previous opinions of this office answer this
in the affirmative.

It is clear from the facts as stated in your letter that
the county has claim against the assessor and his assistants
for their overpayments, and that in turn the assessor has
claim against the county for underpayments revealed by the
audit. If suits were filed in court, the defendants in any
given case could raise the applicable statute of limitations
as a defense in view of the time expired since all the
claims accrued. See Section 516.120 RSMo, 1959; Opinion No.
241, Bollinger, 10/1/65; Opinion to Dawes, 10/28/55, both
enclosed.

The county is in fact legally bound to raise such affirm-
native statute of limitations defense on its behalf (Opinion
No. 241, supra; Opinion No. 39, Henson, 9/13/54). It would
thus appear that from a legal as well as practical standpoint,
the various claims would be uncollectible in court if the de-
fense of the statute of limitations were raised by the private
parties as well as the county. However, the assessor as an
individual could of course waive this defense.

It therefore appears that even without initiating formal
civil court proceedings to collect these claims, a "settle-
ment" by payment to the county of a sum agreed upon between
the private individuals involved and the county court, is of
course possible. See Opinion No. 39, Tochey, 11/14/61, en-
closed.

Very truly yours,

JOHN C. DAINFORTH
Attorney General

Enclosures: Opinions to:
Dawes, 10/28/55
Bollinger, 10/1/65
Tochey, 11/14/61
Henson, 9/13/54