

ASSESSMENT OF REAL PROPERTY: An assessor cannot assess real property in subsequent years for any  
ASSESSORS: prior year in which such real estate  
REAL PROPERTY: was assessed even though the assessor  
TAXATION: was not aware of the fact that im-  
provements were on such land on January 1 of the prior year when the  
land and the improvements were owned by the same person as of January  
1 of the prior year.

OPINION NO. 334

July 31, 1970

Mr. Jim Tom Reid  
County Counselor  
Jackson County  
Suite 202 Court House  
Kansas City, Missouri 64106



Dear Mr. Reid:

This is in response to your request for an opinion on the following questions:

"1) Where a tax bill based upon an assessment of land only, has been issued and paid in a particular year, may an assessment be made for that particular year in a subsequent year when it is discovered that in actuality improvements were located upon that land as of January 1 of the particular year?

"2) If such a corrective assessment can be so made in a subsequent year for such prior year, can the County Collector legally enforce collection procedures toward collection of the amount of the increased tax resulting from the increased assessment when the original prior year's assessment and bill has been paid in full?"

We assume that the question relates to assessment of land and improvements under single ownership, and not separate assessments of land and improvements to different owners.

The statutes applicable to your questions are:

"The following words, terms and phrases when used in laws governing taxation and revenue in the state of Missouri shall have the meanings

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ascribed to them in this section, except when the context clearly indicates a different meaning:

\* \* \*

"(2) 'Real property' includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon, and all rights and privileges belonging or appertaining thereto;" (Section 137.010, RSMo)

"If by any means any tract of land or town lot shall be omitted in the assessment of any year or series of years, and not put upon the assessor's book, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon his book before the same is returned to the court, with all arrearages of tax which ought to have been assessed and paid in former years charged thereon." (Section 137.165, RSMo)

The accepted rule is that the power to levy and collect taxes must be based upon clear statutory authority.

". . . The decision [Carter Carburetor Corporation v. City of St. Louis, 356 Mo. 646, 203 S.W.2d 438] was bottomed on the principle, which continues to be our guide, that the power to tax is an extraordinary one and must be based on specific or clearly implied authority. . . ." (State ex rel. Agard v. Riederer, 448 S.W.2d 577, 579 (Mo. en banc 1969))

"Real property" is defined by Section 137.010(2), RSMo, to include both land and any buildings, structures, improvements and fixtures of whatever kind thereon. Section 137.165, RSMo, gives the assessor the authority to assess at anytime ". . . any tract of land or town lot . . ." that has been "omitted" from assessment in former years. Section 137.165, RSMo, has existed without appreciable change since 1835 (L. 1835, p. 534, §25). Prior to 1949, present Section 137.010, RSMo, provided in part:

"The term 'real property,' 'real estate,' 'land' or 'lot' wherever used in this chapter, shall be held to mean and include not only the land

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itself, whether laid out in town or city lots or otherwise, with all things contained therein, but also all buildings, structures and improvements and other permanent fixtures, of whatsoever kind thereon, . . ." (Section 11211, RSMo 1939)

The legislature in 1945 (L. 1945, p. 1799, §3) and in 1949 (Senate Bill No. 1021, 1949) enacted the present version of Section 137.010, RSMo. With this change in Section 137.010, RSMo, we think it even clearer that the legislature has only authorized assessors to make subsequent assessments of omitted "tracts of land." Since the assessment of any tract of land or a town lot includes the value of the buildings thereon when both are owned by the same person, the entire tract of land including buildings thereon was assessed in prior years and cannot be construed to be a tract of land or town lot which was omitted in the assessment of such prior year. (Section 137.165, RSMo).

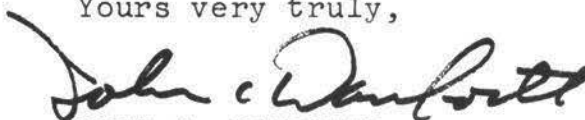
Because of this view we take of your first question, it is not necessary to answer your second question.

#### CONCLUSION

It is the opinion of this office that an assessor cannot assess real property in subsequent years for any prior year in which such real estate was assessed even though the assessor was not aware of the fact that improvements were on such land on January 1 of the prior year when the land and the improvements were owned by the same person as of January 1 of the prior year.

The foregoing opinion, which I hereby approve, was prepared by Assistant, Louren R. Wood.

Yours very truly,



JOHN C. DANFORTH  
Attorney General