

May 17, 1971

OPINION LETTER NO. 180

Answer by Letter (Klaffenbach)

Honorable Charles E. Valier
Representative, District 69
Room 235B-G, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Valier:

This letter is in response to your opinion request in which you ask:

"... . Can the Assessor of the City of St. Louis voluntarily maintain assessments at the present level without increasing them when improvements are made on property without being in violation of Article 10, Section 3 of the Constitution or any other laws of the State of Missouri?"

Article X, Section 3 of the Missouri Constitution which you cite, provides:

"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in

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which the property is assessed. Except as otherwise provided in this constitution, the methods of determining the value of property for taxation shall be fixed by law."

Section 137.490, RSMo 1969, with respect to assessments in the City of St. Louis provides:

"The assessor, or his deputies under his direction, shall assess all the taxable real property within the city and all tangible personal property taxable by the city under the laws of this state in the manner provided in sections 137.485 to 137.550 and as otherwise provided by law, and for that purpose the assessor may divide and assign the work or any of it among them. They shall commence their assessment on the first day of January in each year and complete the assessment, and the deputies make their final reports thereof to the assessor, on or before the first day of April next following. The assessor shall see that the assessment is made uniform and equal throughout the city. If the assessor proposes to increase any assessment of real property, he shall give notice of the fact to the person owning the property affected, his agent or representative, by personal notice, or by mail directed to the last known address."

We note that under Section 82.560, RSMo 1969, the assessor of such a constitutional charter city takes an oath similar to that taken by county assessors under Section 53.030, RSMo 1969, to "assess all of the real and tangible personal property in the county in which he assesses at what he believes to be the actual cash value." This duty was noted by the Missouri Supreme Court in Columbia Terminals Co. v. Koeln, 3 S.W.2d 1021. Further, the Supreme Court stated, in State v. Gehner, 5 S.W.2d 40, 45, that:

". . . The Constitution of this state (article 10, section 4) requires that 'all property subject to taxation shall

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be taxed in proportion to its value.' Under our Constitution, the species of property taxed (whether it be tangible property, real or personal, or whether it be the shares of the capital stock of a banking corporation) must be taxed 'in proportion to its value,' i.e., the actual or real value; not a false or fictitious value, but a value which is neither inflated nor deflated.
..."

The present provision of the Missouri Constitution with respect to valuation, Article X, Section 4(b) provides:

"Property in classes 1 and 2 [real property and tangible personal property] and subclasses of class 2, shall be assessed for tax purposes at its value or such percentage of its value as may be fixed by law for each class and for each subclass of class 2. Property in class 3 [intangible personal property] and its subclasses shall be taxed only to the extent authorized and at the rate fixed by law for each class and subclass, and the tax shall be based on the annual yield and shall not exceed eight per cent thereof." [Bracketed matter added; see Article X, Section 4(a)]

Likewise with respect to the classification of realty and the uniformity of taxes upon the same class of subjects the Missouri Supreme Court in Drey v. State Tax Commission, 345 S.W.2d 228 stated at l.c. 236-237:

"...Like classification of real property and uniform taxes upon the same class of subjects, however, are not only possible but are required, by Constitution of Missouri, 1945, Art. X, §§4(a) and 3, respectively. There are no subclassifications of real estate for the purposes of taxation. (Citation) ... An intentional

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plan or design of discrimination by which one kind or class of property is systematically assessed at a higher percentage of its value than other property in the county works a constructive fraud upon each property owner thus discriminated against. ..."

We therefore conclude that assessments must be made each year, improvements must be valued and included in such assessments and uniformity must be maintained.

Very truly yours,

JOHN C. DANFORTH
Attorney General