

ASSESSMENTS: (1) The State Tax Commission has the  
STATE AUDITOR: authority and is obligated to equal-  
STATE TAX COMMISSION: ize the assessments of property among  
the various counties and the City of  
St. Louis pursuant to Section 138.390, RSMo, and has the duty to  
order any county in which valuations of property are below 33 1/3%  
of true value to raise the valuation of such property to 33 1/3% of  
true value and to order any county in which valuations of property  
are above 33 1/3% of true value to lower the valuation of such prop-  
erty to 33 1/3% of true value. (2) The State Tax Commission has no  
authority to equalize the assessments among various parcels of prop-  
erty within a county as such, but individual assessments can be  
raised or lowered pursuant to Sections 138.380, 138.460, and 138.  
470, RSMo. (3) The State Auditor has no authority to compel the  
State Tax Commission to require the equalization of assessments  
among the various counties or the City of St. Louis at 33 1/3% of  
true value.

OPINION NO. 88

February 28, 1975

Honorable George W. Lehr  
State Auditor  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Lehr:

This opinion is in response to the following questions that  
you have asked:

"1) What authority and obligation, if any,  
does the State Tax Commission have to re-  
quire that all property in the state is as-  
sessed at 33 1/3% of true value?

"2) What authority and obligation, if any,  
does the State Tax Commission have to re-  
quire that assessments be equalized within  
any county or the City of St. Louis?

"3) What authority and obligation, if any,  
does the State Tax Commission have to re-  
quire that assessments be equalized among  
the various counties and the City of St.  
Louis?

"4) What authority do I, as State Auditor,  
have to compel the State Tax Commission to  
perform any of the above obligations that  
you may determine to exist?"

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A review of the relevant provisions of law is necessary to answer your first three questions. Article X, Section 4(a) and (b) of the Missouri Constitution state as follows:

"Section 4(a). All taxable property shall be classified for tax purposes as follows: class 1, real property; class 2, tangible personal property; class 3, intangible personal property. The general assembly, by general law, may provide for further classification within classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. Nothing in this section shall prevent the taxing of franchises, privileges or incomes, or the levying of excise or motor vehicle license taxes, or any other taxes of the same or different types.

"Section 4(b). Property in classes 1 and 2 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 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."

Section 137.115, RSMo, effective December 31, 1974, states as follows:

"1. All other laws to the contrary notwithstanding, the assessor or his deputies in all counties of this state including the city of St. Louis, shall between the first day of January and the first day of June, annually make a list of all real and tangible personal property taxable in his city, county, town or district and except as otherwise provided in subsections 2 and 3 hereof, shall assess the property at thirty-three and one-third percent of its true value in money in the following manner: He shall call

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at the office, place of doing business, or residence of each person required by this chapter to list property, and require the person to make a correct statement of all taxable real property in the county owned by the person, or under his care, charge or management, and all taxable tangible personal property owned by the person or under his care, charge or management, taxable in the county, except merchandise upon which he is required to pay a license tax.

"2. Assessors in each county of this state and the city of St. Louis may send personal property assessment forms through the mail.

"3. Agricultural field crops in an unmanufactured condition which are used or intended to be used solely as seed or in the feeding of livestock or poultry constitute a separate class of tangible personal property and shall be assessed and valued for the purpose of taxation at ten percent of their true value in money. This provision does not apply to the assessment of licenses and taxes on merchants or manufacturers, but the licenses and taxes shall continue to be assessed in the manner provided in sections 150.010 to 150.370, RSMo.

"4. The person listing the property shall enter a true and correct statement of the property, in a printed blank prepared for that purpose. The statement, after being filled out, shall be signed and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor."

The significant change in this latest amendment of Section 137.115, RSMo, over previous versions, is that it requires that property be assessed at ". . . thirty-three and one-third percent of its true value . . ." instead of "true value."

The general duties and powers of the State Tax Commission and its duties and powers relating specifically to the assessment of property are established in Sections 138.380 and 138.390, RSMo, as follows:

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"It shall be the duty of the state tax commission, and the commissioners shall have authority to perform all duties enumerated in this section and such other duties as may be provided by law:

(1) To raise or lower the assessed valuation of any real or tangible personal property, including the power to raise or lower the assessed valuation of the real or tangible personal property of any individual, copartnership, company, association or corporation; provided, that before any such assessment is so raised, notice of the intention of the commission to raise such assessed valuation and of the time and place at which a hearing thereon will be held, shall be given to such individual, copartnership, company, association or corporation as provided in sections 138.460 and 138.470;

(2) To require from any officer in this state, on forms prescribed by the commission, such annual or other reports as shall enable said commission to ascertain the assessed and equalized value of all real and tangible property listed for taxation, the amount of taxes assessed, collected and returned, and such other matter as the commission may require, to the end that it may have complete information concerning the entire subject of revenue and taxation and all matters and things incidental thereto;

(3) To cause to be placed upon the assessment rolls at any time during the year omitted property which may be discovered to have, for any reason, escaped assessment and taxation, and to correct any errors that may be found on the assessment rolls and to cause the proper entry to be made thereon;

(4) To investigate the tax laws of other states and countries, to formulate and submit to the legislature such recommendations as the commission may deem expedient to prevent evasions of the assessment and taxing laws, whether the tax is specific or general,

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to secure just, equal and uniform taxes, and improve the system of assessment and taxation in this state;

(5) To prescribe the form of all blanks and books that are used in the assessment and collection of the general property tax, except as otherwise provided by law."  
(Section 138.380, RSMo)

"1. Between the dates of June twentieth and the second Monday in July, 1946, and between the same dates each year thereafter, the state tax commission shall equalize the valuation of real and tangible personal property among the several counties in the state in the following manner: With the abstracts of all the taxable property in the several counties of the state and the abstracts of the sales of real estate in such counties as returned by the respective county clerks and the assessor of the city of St. Louis, the commission shall classify all real estate situate in cities, towns, and villages, as town lots, and all other real estate as farming lands, and shall classify all tangible personal property as follows: Banking corporations, railroad corporations, street railroad corporations, all other corporations, horses, mares and geldings, mules, asses and jennets, neat cattle, sheep, swine, goats, domesticated small animals and all other livestock, poultry, power machinery, farm implements, other tangible personal property.

"2. The Commission shall equalize the valuation of each class thereof among the respective counties of the state in the following manner:

(1) It shall add to the valuation of each class of the property, real or tangible personal, of each county which it believes to be valued below its real value in money such per cent as will increase the same in each case to its true value;

(2) It shall deduct from the valuation of each class of the property, real or tangible

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personal, of each county which it believes to be valued above its real value in money such per cent as will reduce the same in each case to its true value."

(Section 138.390, RSMo)

Initially, it is our view that the latest amendment to Section 137.115, RSMo, has simply given different legislative guidance to the various entities at the state and local level charged with the responsibility for assessment of property. Where the provision previously required assessment of property at "true value," it now requires assessment at 33 1/3% of true value. We do not view this statutory amendment as altering the powers and duties of the State Tax Commission other than to establish a different assessment standard that the Commission should utilize in discharging its obligations.

In response to your second and third questions specifically, the law has clearly been that county boards of equalization have the exclusive duty and obligation to equalize intra-county assessments within their respective counties (and the City of St. Louis), and the State Tax Commission has the exclusive duty and obligation to equalize assessments among the various counties and the City of St. Louis.

In May Department Stores Company v. State Tax Commission, 308 S.W.2d 748 (Mo. 1958), the Missouri Supreme Court stated at p. 759:

"A County Board of Equalization has the full power and duty to effect intra-county equalization. § 138.050, § 138.100. It shall raise the valuation of all tracts as have, in its opinion, 'been returned below their real value.' The State Tax Commission has nothing to do with intra-county equalization. § 138.390; First Trust Co. of St. Joseph v. Wells, 324 Mo. 306, 23 S.W.2d 108. . . ."

Further definition of "intercounty equalization" and "intra-county equalization" and the respective powers of county boards of equalization and the State Tax Commission is found in Foster Bros. Mfg. Co. v. State Tax Commission of Missouri, 319 S.W.2d 590 (Mo. 1958) at p. 594:

"In addition to its duty to hear appeals of individual property owners from the action of local boards, the [State Tax] Commission has the duty to equalize the valuation of

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property as between the several counties (and City of St. Louis) of the State. That duty is called intercounty equalization. . . .

"As heretofore noted, the Board of Equalization of St. Louis has the power and duty to equalize the assessment valuations of real property within the city. Section 138.150. The performance of that duty is called intra-county equalization."

See also, First Trust Co. of St. Joseph v. Wells, 23 S.W.2d 108, 110-111 (Mo. 1929).

This office has previously held that the State Tax Commission discharges its duties relating to intercounty equalization by following the procedures established in Section 138.390, RSMo. Opinion No. 18 dated February 28, 1957, to Honorable Arthur B. Cohn (copy enclosed). At page 2 of the Cohn opinion we stated:

"Section 138.390 RSMo 1949, provides that between the dates of June 20th and the second Monday in July of each year, the State Tax Commission shall proceed to equalize the real and tangible personal property among the several counties in the state by adding to or deducting from the valuation of each class of property, such per cent as will tend to equalize the valuation of property throughout the state. Thus it is seen that the State Tax Commission is not, in performing their intercounty equalization function dealing with the valuation of individual pieces of property, but is dealing only in aggregate valuation of the several classes of property within the county. In other words, the State Tax Commission fixes and determines only the total valuation of the class of property within a county rather than the valuations of individual tracts. After such aggregate valuation is determined by the State Tax Commission, the secretary of said commission is required to transmit to the county clerk a report showing the per cent added to or deducted from the valuation of each class of property in the county, together with the aggregate value of the real and tangible personal property in

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the county, as fixed and determined by the commission. Such report is to be delivered to the county clerk so that it may be in the hands of the county board of equalization on or before the second Monday in July. See Section 138.140 RSMo 1949. The method of effecting a compliance with said order is left to the determination of the proper county officials."

An additional consideration relating to the State Tax Commission's powers to assess individual parcels of real property should be mentioned. As quoted previously, Section 138.380(1), RSMo, states:

"It shall be the duty of the state tax commission, and the commissioners shall have authority to perform all duties enumerated in this section and such other duties as may be provided by law:

(1) To raise or lower the assessed valuation of any real or tangible personal property, including the power to raise or lower the assessed valuation of the real or tangible personal property of any individual, copartnership, company, association or corporation; provided, that before any such assessment is so raised, notice of the intention of the commission to raise such assessed valuation and of the time and place at which a hearing thereon will be held, shall be given to such individual, copartnership, company, association or corporation as provided in sections 138.460 and 138.470;"

Section 138.460, RSMo, states:

"1. After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof.

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"2. In case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer, who has previously appealed to the local board of equalization, that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, said time to be not less than five days from the date of the issuance of said order, and the place to be at the office of the county court at the county seat, or at such other place in said county in which said roll was made as the commission shall deem most convenient for the hearing herein provided. All complaints shall be filed with the commission not later than September thirtieth.

"3. A copy of above order shall be published in at least one newspaper published in the county at least five days before the time at which said assessor is required to appear; or, where practicable, notice by mail may be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall be served on the assessing officer at least three days before he is required to appear with said roll."

Section 138.470, RSMo, states:

"1. The commission, or any member thereof, or any duly authorized agent, shall appear at the time and place mentioned in said order, and the assessing officer, upon whom said notice shall have been served, shall also appear with said assessment roll. The commission, or any member thereof, or any duly authorized agent thereof, as the case may

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be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected, or liable to be affected by review of said assessments thus provided for, may appear and be heard at said hearing. In case said commission, or any member or agent thereof who is acting in said review, shall determine that the assessments so reviewed are not made according to law, the county clerk shall, in a column provided for that purpose, place opposite said property the lawful valuation of the same for assessment.

"2. As to the property not upon the assessment roll, the county clerk, upon order of the state tax commission, acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter in the proper column the value required by law for the assessment of said property. The county clerk, upon orders of the state tax commission, shall also spread upon said roll a certificate showing the day and date on which said assessment roll was reviewed by the commission.

"3. For appearing with said roll as required herein the assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the county board of equalization. His claim shall be presented to and paid by the proper officer of the political subdivision, or municipality, of which he is the assessing officer, in the manner as his other compensation is paid.

"4. The action of the commission, or member or agent thereof, when done as provided in this section, shall be final, subject, however, to the provisions of section 22, article V of the Constitution of Missouri and laws enacted thereunder.

"5. When any property has been reviewed, assessed and valued by the commission as

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herein authorized, such property shall not be assessed or valued at a lower figure or a higher figure by the local assessing or equalizing officer for the year the assessment is made."

These sections of Chapter 138, RSMo, describe, in effect, two methods by which the State Tax Commission is authorized to review an assessment of an individual parcel and revise the assessment, if found warranted.

Section 138.460.1, RSMo, provides that the assessment rolls ". . . shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof. . . ." after having ". . . been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the . . ." collectors.

Subsection 2 of Section 138.460, RSMo, provides that after investigation by the Commission, or upon complaint of any taxpayer, as provided, the State Tax Commission may order a hearing to consider the assessment, if the Commission believes that the assessment has not been made in compliance with the law. The Commission after review pursuant to Sections 138.460 and 138.470, RSMo, may revise the assessment. See Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 19 S.W.2d 746 (Mo. Banc 1929), cert. den. 280 U.S. 604, order revoked 280 U.S. 550, rev'd on other grounds 281 U.S. 673, conformed to 42 S.W.2d 23; where the Supreme Court of Missouri en banc stated at 19 S.W.2d 751:

"It is no doubt true that the state tax commission was not intended to supplant local assessing officers and boards, but very clearly it is given full and adequate power, not only to supervise, but to review, their work, and where it finds assessments which were not made conformably to law to revise them--and this by inserting where necessary, after a hearing, its own valuations in lieu of those made by the local authorities. . . ."

See also, Wiget v. City of St. Louis, 85 S.W.2d 1038 (Mo. 1935), where the Supreme Court of Missouri explained the Brinkerhoff-Faris case as follows at p. 1043:

". . . this case . . . held that the State Tax Commission was vested with full and adequate power, not only to supervise, but

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to review, the work of the local assessing officers and boards, and to revise assessments not made conformably to law. . . ."

Thus, it appears that the State Tax Commission has the authority, on its own initiative, to review all individual assessments within any and all counties and the City of St. Louis. If the Commission, pursuant to the above-quoted provisions, did review all assessments within a particular county or the City of St. Louis, and revised them accordingly, this could, in fact, constitute an "intra-county equalization." However, this authority, by the language used in the above-quoted provisions, is clearly discretionary with the Commission.

In addition, we note Section 138.410, RSMo, which states:

"1. The commission shall exercise general supervision over all the assessing officers of this state, over county boards of equalization and appeal in the performance of their duties under this chapter and all other laws concerning the general property tax and shall institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this chapter, and of all laws relating to the general property tax.

"2. In the execution of these powers the said commission shall call upon the attorney general or any prosecuting or circuit attorney in the state, to assist this commission in the enforcement of laws with the supervision of which this commission is charged, and when so called upon it shall be the duty of the attorney general, and the prosecuting or circuit attorneys in their respective counties, to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishments for violation of the laws in respect to the assessment and taxation of property, and to represent the commission in any litigation which it may wish to institute or in which it may become involved in the discharge of its duties."

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We feel compelled, however, to observe that prosecuting attorneys and the Attorney General should be called upon to ". . . assist in the commencement and prosecutions of actions and proceedings for penalties, forfeitures, removals and punishments for violation . . ." in only the most extreme of circumstances. The nature of the duties of local assessors and county boards of equalization and the strict legal standard against which any contemplated action must be measured would make any such prosecution extremely difficult.

In light of the previous discussion, your last question concerns what authority, if any, you possess as State Auditor to compel the State Tax Commission to require the equalization of assessments among the various counties and the City of St. Louis at 33 1/3% of true value.

Article IV, Section 13 of the Missouri Constitution states:

"The state auditor shall have the same qualifications as the governor. He shall establish appropriate systems of accounting for all public officials of the state, post-audit the accounts of all state agencies and audit the treasury at least once annually. He shall make all other audits and investigations required by law, and shall make an annual report to the governor and general assembly. He shall establish appropriate systems of accounting for the political subdivisions of the state, supervise their budgeting systems, and audit their accounts as provided by law. No duty shall be imposed on him by law which is not related to the supervising and auditing of the receipt and expenditure of public funds."

The following provisions in Chapter 29 relating to the State Auditor are relevant to the State Auditor's authority to audit the State Tax Commission.

Section 29.200, RSMo, states:

"The state auditor shall post-audit the accounts of all state agencies and audit the treasury at least once annually. Once every two years, and when he deems it necessary, proper or expedient, the state auditor shall examine and post-audit the accounts of all

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appointive officers of the state and of institutions supported in whole or in part by the state. He shall audit any executive department or agency of the state upon the request of the governor."

Clearly, the State Tax Commission is a state agency and the State Auditor is authorized to "post-audit the accounts" of the Commission.

Section 29.235.1, RSMo, states:

"1. All audits shall conform to recognized governmental auditing practices."

Section 29.180, RSMo, states:

"The state auditor in cooperation with the budget director shall establish appropriate systems of accounting for all officers and agencies of the state, including all educational and eleemosynary institutions, and he shall also prescribe systems of accounting for all county officers. Such systems of accounting shall conform to recognized principles of governmental accounting and shall be uniform in application to officers of the same grade and kind and to accounts of the same kind. Such systems of accounting shall be adequate to record all assets and revenues accrued, all liabilities and expenditures incurred, as well as all cash receipts and disbursements, and all transactions affecting the acquisition and disposition of property, including the preparation and keeping of inventories of all property. Each department shall keep such accounts in accordance with the system of accounts prescribed by the auditor."

We find nothing in the above-quoted provisions which would authorize you, as State Auditor, to compel the State Tax Commission to require the equalization of assessments among the various counties and the City of St. Louis at 33 1/3% of true value.

Furthermore, the Supreme Court of Missouri in State ex rel. St. Francois County School District R-III v. LaLumondier, No. 58,586 (Mo. February 10, 1975), held that a school district did

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not have standing to challenge an assessment of private property within the district where there was no express statutory authorization for an appeal by said political subdivision. The court held that if the General Assembly had desired to provide an appeal right for others than the particular property owner it would have done so. The court stated at Slip Opinion pp. 8-9:

". . . No doubt such [appeal right of governmental subdivision] was originally omitted on the theory that public officials would adequately protect the interests of the state and its subdivisions and hence it was only necessary to provide an appeal for property owners who considered the valuation of their property to be excessive. We recognize that relator has a vital interest in the assessment valuation of property located in its district. In the situation presented it may be that the legislature should review the matter and give consideration to an appropriate amendment of the section. Until appeal or other review procedure is provided, however, we must rule that school districts do not have standing to obtain a review of alleged underassessment of property by the county board."

We believe the reasoning applied in this case supports our view that, in the absence of express statutory authority, you, as State Auditor, lack authority to compel the State Tax Commission to require the equalization of assessments among the various counties and the City of St. Louis at 33 1/3% of true value.

#### CONCLUSION

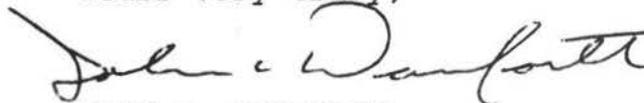
It is the conclusion of this office that: (1) the State Tax Commission has the authority and is obligated to equalize the assessments of property among the various counties and the City of St. Louis pursuant to Section 138.390, RSMo, and has the duty to order any county in which valuations of property are below 33 1/3% of true value to raise the valuation of such property to 33 1/3% of true value and to order any county in which valuations of property are above 33 1/3% of true value to lower the valuation of such property to 33 1/3% of true value; (2) the State Tax Commission has no authority to equalize the assessments among various parcels of property within a county as such, but individual assessments can be raised or lowered pursuant to Sections 138.380,

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138.460, and 138.470, RSMo; (3) the State Auditor has no authority to compel the State Tax Commission to require the equalization of assessments among the various counties or the City of St. Louis at 33 1/3% of true value.

The foregoing opinion, which I hereby approve, was prepared by my assitant, Andrew Rothschild.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 18  
2-28-57, Cohn