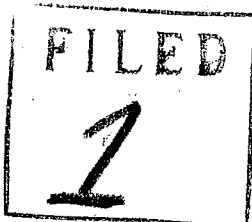


COUNTY COURTS: County court in county under township organiza-
ASSESSORS: tion does not have authority under Section 53.190
to remove township clerk and ex officio township
assessor.



August 9, 1954

Honorable Walter E. Allen
Prosecuting Attorney
Linn County
Bettelheim Building
Brookfield, Missouri

Dear Sir:

Reference is made to your request for an official opinion
of this department reading as follows:

"I would like your opinion on the follow-
ing question:

"Does the County Court of a County operat-
ing under the Township form of government
have the power under Section 53.190 Revised
Statutes of Missouri, 1949, to remove from
office the Township Assessor for violating
the provisions of the law as described in
that Section or does Section 53.190 refer
only to County Assessors under the County
Unit plan of government?"

Section 53.190 RSMo 1949, which you have referred to in
your letter of inquiry, reads as follows:

"Every assessor who shall knowingly fail
to perform any duty enjoined upon him by
law, in the time prescribed, shall be re-
moved from office by the county court, who
shall appoint another in his stead. Such
new assessor shall take a like oath and
give a like bond as required of the first,
and the county court shall ascertain the
amount necessary to complete the assess-
ment of the county and shall institute proceed-
ings upon the bond of such delinquent
assessor for the collection of such amount
from him and his sureties."

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Our research into the question you have presented leads us to the conclusion that the power conferred upon the county court under the provisions of the statute quoted does not extend to the removal from office in a county under township organization of a township clerk and ex officio township assessor. Our conclusion is predicated upon the following reasoning.

In the first instance there is no "assessor," as such, in counties under township organization. Section 65.110, providing for township officers, reads as follows:

"There shall be chosen at the biennial election in each township one trustee, who shall be ex officio treasurer of the township, one township collector, one township clerk, who shall be ex officio township assessor, and two members of the township board."
(Emphasis ours.)

In view of the fact that the person elected as township clerk serves in a dual capacity, one of which includes the duties of an assessor, it becomes apparent that there is no officer in the township against whom the provisions of Section 53.190 RSMo 1949 might be directed. It has been repeatedly held that county courts are courts of limited jurisdiction and may not exercise powers beyond those specifically conferred upon them or necessarily implied to effectuate the discharge of official duties. This limitation is more applicable since the adoption of the Constitution of 1945 wherein county courts have been deprived of their status as courts of record and remain now primarily as fiscal managing agencies of the counties. Consequently, the power to remove an "assessor" would not be construed to extend to the removal of a "township clerk and ex officio township assessor."

Secondly, we note that Section 53.190 authorizes the county court, in counties wherein such statute is applicable, to appoint a successor to an assessor who has been removed. Examination of the statutes relating to vacancies in office in counties under township organization discloses that Section 65.200 RSMo 1949 contains a complete scheme for the filling of vacancies in township offices. This section reads as follows:

"Whenever any township shall fail to elect the proper number of officers to which such township may be entitled, or when any person elected or appointed shall fail to qualify, or when any vacancy shall happen in

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any township office from any cause, it shall be lawful for the township board to fill such vacancy by appointment, and the person so appointed shall hold the office and discharge all the duties of the same during such unexpired term, and until his successor is elected or appointed and qualified, and shall be subject to the same penalties as if they had been duly elected; provided, that any vacancy in the township board shall be filled by appointment of the county court."

It is noted that Section 53.190 RSMo 1949 became a part of our statutory law in 1835, whereas Section 65.200 RSMo 1949 was enacted at a much later date, viz., 1872. The later adoption of the comprehensive scheme for the filling of vacancies in township offices indicates to us a legislative intent that as to counties under township organization Section 53.190 RSMo 1949 is inapplicable.

In the foregoing opinion we have assumed the constitutionality of all statutes mentioned.

CONCLUSION

In the premises, we are of the opinion that a county court of a county operating under township organization may not remove from office under the provisions of Section 53.190 RSMo 1949 a township clerk and ex officio township assessor.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl