COUNTY COURTS: Procedure to be followed in proceeding to correct error of valuations under Section 11118.

November 8, 1941

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Mr. George R. Clark
Assessor
Jackson County
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of October 27, 1941, asking us to review our opinion to Walter H. Miller, former Jackson County Assessor, under date of November 24, 1934. In that opinion we held that the County Court, by virtue of the authority granted in Section 11118, R. S. Missouri, 1939, could correct erroneous valuations of real estate at any time prior to the time the taxes due on said real estate were paid.

As to this request, we need only say that we have, on several other occasions, been asked to recede from the conclusion reached in that opinion and have declined to do so. We have again reviewed it and our present research does not disclose any ruling by a court of last resort, since said opinion was issued, that causes us to change the views we expressed therein. We still believe it is a correct exposition of the law.

Your letter of October 27, 1941, however, presents an additional question. The correctness of the procedure being followed by the Jackson County Court in exercising the authority granted in Section 11118, R. S. Missouri, 1939. In your letter you state that, with our opinion as "its license, the Court, without the showing of a basis in fact, has followed the practice of indiscriminately cutting and lowering valuations upon Jackson County real estate, either because of whim or caprice or for other reasons best known to themselves. The practice, too, is indulged in, as I say, indiscriminately and arbitrarily, after the equalization functions of the County Board and of the State Tax Commission have been followed. Evidence

of the chaotic condition in which the entire basic tax level of the County may be thrown, if the present practice were followed to its ultimate possibility, is drawn from the fact that in connection with the tax base established for the year 1939, the County Court, for taxes payable in that year, and after delinquency in certain of those taxes, entered special privilege dispersing abatement orders, during the year 1940, reducing real estate valuations (and thus cutting the tax due thereon) in the sum of $10,000,000.00."

Upon this statement of fact you ask: "* * *, if the County Court of Jackson County has the right and power by law to arbitrarily adjust valuations or abate State, County and School taxes duly placed on real estate and due thereon, upon alleged 'errors' or 'mistakes' of valuation, in the absence of a finding and certificate of error or mistake, by the official, or officials, charged by law with the initial determination of that fact?"

It would be extremely difficult for us to determine whether the Court has been acting properly upon the statement of facts before us, and for that reason we will not attempt to do so. We think the best way to answer your request is to outline what is the correct procedure and let others, more familiar with the present practice, lay that outline beside the present procedure followed and thus determine its sufficiency or correctness.

The County Court is a Court of record (Section 1990, R. S. Missouri, 1939), and as such, can only speak through its records when acting judicially. The rule is stated in Riley v. Pettis County, 96 Mo. 318, 321, as follows: "* *. The County Court, when acting in a judicial capacity, can speak only by and through its records."

Under Section 11118, R. S. Missouri, 1939, the County Court is given "* * * full power to correct any errors which may appear in connection * * *," with taxes assessed against real estate, "* * * whether of valuation, * * * or otherwise, * * *" and "* * * to make such valuations * * * conform in all respects to the facts and requirements of the law.* * *." The function of the County Court under this section has not yet been classified as to whether judicial

or administrative, but we think the rulings made on analogous functions are authority for classing the function of correcting errors in valuation as judicial.

The County Board of Equalization is the analogy to which we refer. Section 11002, R. S. Missouri, 1939, provides that:

> "Said board shall have power to hear complaints and to equalize the valuations and assessments upon all real * * * property within the county * * * * * * * * * * so that each tract of land shall be entered on the tax book at its true value: * * * * *."

Section 11004, R. S. Missouri, 1939, provides:

> "The said board shall hear and determine all appeals made from the valuation of property made by the assessor in a summary way, and shall correct and adjust the assessment accordingly. The county clerk shall keep an accurate record of the proceedings and orders of the board, and the assessor shall correct all erroneous assessments, and the clerk shall adjust the tax book according to the orders of said board and the orders of the state board of equalization: Provided, that in adding or deducting such per centum to each tract or parcel of real estate as required by said board, he shall add or deduct in each case any fractional sum of less than fifty cents, so that the value of any separate tract shall contain no fractions of a dollar."

State ex rel. Van Raalte v. Board of Equalization of City of St. Louis, et al., 256 Mo. 455, was an action involving a valuation increased by the board. The charter provision involved was, in substance, the same as Sections 11002 and 11004, supra. After the board had acted, certiorari was sued out in the circuit court and the case thereafter went on appeal to the Supreme Court. That court, in characterizing the function of the board, said l. c. 461:

> "The functions of the board of equalization in judging the assessments of property are judicial, * * * * * *."

State ex rel. Morris v. Cunningham, 153 Mo. 642, was an action wherein the board of equalization had raised a personal property valuation. The court said, in characterizing the nature of this act, l. c. 654:

> "* * * such proceedings do partake somewhat of a judicial character * * * * * * * * * * *."

Again, in State ex rel. Johnson v. Bank, 279 Mo. 228, at l. c. 235, the court said:

> "The county boards of equalization perform judicial functions, as is clearly indicated by Article 3 of Chapter 117, Revised Statutes 1909. And this court has so held. Thus in Black v. McGonigle, 103 Mo. l. c. 198, et seq., is said: 'According to the plain letter of the statute, the board has not only the power to hear complaints, but it has the power, of its own motion, to equalize the valuation for the purposes named in the law, namely, so that each tract of land shall be entered at its "true value." In performing these

> duties the board acts judicially: this has been often held, and the very nature of the duty to perform makes it a judicial one. (St. Louis Mutual Life Ins. Co. v. Charles, 47 Mo. 465; Railroad v. Maguire, 49 Mo. 483; Cooley on Taxation (1 Ed.), 291.)""
> (Underscoring ours)

There is no essential difference between the acts of the board in adjusting valuations and the acts of the County Court, under Section 11118, in correcting errors in valuations. Under the above authorities we are of the opinion that in correcting such errors the County Court acts judicially as a court of record.

It is well settled in this state that courts cannot set themselves into motion. In Owen v. McCleary, 273 S. W. 145 (Mo. App.) it is said, l. c. 147:

> "It is well settled that a court cannot of its own motion set itself in action; * * * * * * * * * * *."

Again, in Riggs v. Moise, 128 S. W. (2d) 632 (Mo. Sup.) the rule is stated. At l. c. 635, it is said:

> "'The judicial power can be set in motion in civil matters only by some person * * * * *. The courts cannot, ex mero motu, set themselves in motion, * * * * * * * * * * *."

It is, therefore, to be seen that before the County Court can act, to correct errors of valuations, some person must invoke their jurisdiction by an appropriate request.

Section 11118 does not prescribe the method to be followed in this respect, that is, whether there must be

a written pleading - but we think a review of general rules of law indicate that such a pleading is required.

It has been ruled that a County Court is an inferior court of limited jurisdiction. St. Louis County v. Menke, 95 S. W. (2d) 818 (Mo. App.); Ex Parte McLaughlin, 105 S. W. (2d) 1020 (Mo. App.). As to these courts, it is said in Doddridge v. Patterson, 222 Mo. l. c. 155, that:

> "* * * 'It has long been settled law in Missouri that the jurisdiction of courts of inferior jurisdiction, and of courts that do not proceed according to the course of the common law, must affirmatively appear on the face of the proceedings.' * * * * * *."

On what constitutes jurisdiction, the court, in State ex rel. Lambert v. Flynn, 154 S. W. (2d) 52, 57 (Mo. Sup.) stated:

> "* * *It is said that the jurisdiction of a court to adjudicate a controversy rests on three essentials: (1) jurisdiction of the subject matter; (2) jurisdiction of the res or the parties; (3) and jurisdiction to render the particular judgment in the particular case."

It is these three things that the face of the record must show in order for the proceedings of a County Court to correct errors of valuation, to be valid. In Sutton v. Cole, 155 Mo. 206, the court further discusses the question of jurisdiction of inferior courts and the showing necessary. It is said, l. c. 213:

> "* * * But it is not essential that jurisdiction should appear from the

> face of the record proper. (Case cited). It is sufficient if it appears from the entire record of the proceedings. * * * * *."

At first glance it would appear that this rule is a barrier to concluding that some written pleading is required in these proceedings. However, we do not think so, but to the contrary, believe that it supports our view.

As heretofore noted, jurisdiction consists of three elements. With these in mind, suppose a judgment of the County Court increasing a property valuation that recites that the property owner appeared before the court requesting the court to exercise its power under Section 11118, and that, upon consideration of all the facts, the court finds there has been an error in valuation and therefore corrects said error by increasing the valuation to Two Thousand Dollars ($2,000.00).

Such recitals would no doubt show that the court's jurisdiction was invoked by some person; the matter involved, by reference to the statute, clearly shows jurisdiction of the subject matter and the appearance of the party shows jurisdiction of the party. But would such a recital show jurisdiction to render the particular judgment in the particular case. We do not think it would.

If jurisdiction can be shown by any part of the record, then by the same token, lack of jurisdiction may be shown by something appearing somewhere in the entire record of the proceeding. As was said in Sisk v. Wilkinson, 265 S. W. 536 (Mo. Sup.) at l. c. 538:

> "The judgment may be impeached by other parts of the record, * * * * *."

Again, in G. M. A. C. v. Lyman, 78 S. W. (2d) 109, (Mo. Sup.), it is said, l. c. 112:

> "* * * It is the rule in this state that a recital in a judgment * * * * * may be shown by other parts of the record to be incorrect even in a collateral proceeding. * * * * * *."

Suppose, in this hypothetical case, the property owner had petitioned the court by written pleading to correct some error under Section 11118 other than an error of valuation; that in that proceeding the court, of its own motion, corrected the valuation as above stated. In such case then, the property owner could show by another part of the record (his written pleading) that the County Court had no jurisdiction to render the particular judgment -- that of correcting the valuation.

This is to be seen by what is said in Owen v. McCleary, 273 S. W. 145 (Mo. App.), at l. c. 147, where it is said:

> "It is well settled that a court cannot of its own motion set itself in action; that it has no power to decide questions, except such as are presented by the parties in their pleadings; that, where a court adjudicates a matter not embraced in the issues as made by the pleadings, that part of the judgment so adjudicated is coram non judice and void; * * * * * * *."

Also, in Riggs v. Moise, 128 S. W. (2d) 632, at l. c. 635, it is stated:

> "* * * The courts cannot, ex mero motu, set themselves in motion, nor have they power to decide questions except such as are presented by the parties in their pleadings. The parties, by their attorneys, make the record, and what is decided within the issue is res adjudicata; anything beyond is coram non judice and void.' * * * * * * * * * * *."

However, take the same hypothetical case and suppose the property owner had only made an oral request to the court, where, then, would we be? A court cannot act of its own motion. The judgment reached would show action taken at the request of some person, but since it was not wholly upon the subject upon which action was requested, in effect, it would be the court acting on its own motion on a matter without the issues. This would clearly be wrong, yet there would be no record to show the contrary, and further parol evidence would be inadmissible to contradict or supply the record. (State ex rel. v. Ross, 118 Mo. 23). Neither could said judgment recitals be impeached by parol evidence as to the true request made of the County Court. Sisk v. Wilkinson, 265 S. W. 536, 538 (Mo. Sup.)

A procedure that would lead to such absurd results certainly cannot be the rule. And if jurisdiction to render the particular judgment must be affirmatively shown by the record in order for the action of an inferior court to be valid, then the record must show what action the court was requested to take - what issue was before it - and the only proper place for this to appear is in a written pleading. With a written pleading on file there could be no doubt as to whether the judgment entered was within the issues presented -- that is, the record would show the court had jurisdiction to render the particular judgment that it rendered. We think a written pleading is necessary to show the third element of jurisdiction, as stated in the Flynn Case, supra. A mere recital in the judgment alone of the issue presented might suffice, but it would not be the best evidence of such fact, since such could be impeached by the petition showing otherwise. The only true source of evidence to prove the existence of the third element of jurisdiction would be the petition itself, which would be a part of the record and show conclusively that the court acted within its authority.

As heretofore pointed out, the County Court can only speak through its record and of necessity, would have to render a judgment of record as to its disposition of the case before it.

We think the foregoing disposes of the question before us, and we conclude that the proper procedure to be followed under Section 11118 is for the interested party to petition the court in a written pleading to correct an error of valuation, alleging his reasons therefore; that the court should then hear evidence and make its determination, reciting in its judgment the necessary jurisdictional facts.

Under Section 2479, R. S. Missouri, 1939, the court has the power to bring before it any person or evidence that it deems necessary to examine in order to reach a decision. While such a proceeding would be ex parte, yet, obviously all taxing districts whose revenues depended upon the valuation fixed are interested parties and would have the right to appear and be heard.

Respectfully submitted,

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APPROVED:

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LLB/rv