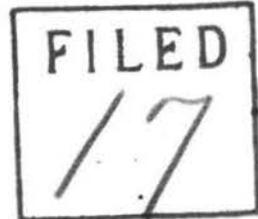


ASSESSORS: May be removed by county court for failure to perform duties and a successor appointed.

May 14, 1943

Honorable Jonathan E. Clarke  
Prosecuting Attorney  
Lincoln County  
Elsberry, Missouri



Dear Sir:

This will acknowledge receipt of your letter of recent date, in which you request an opinion. Your request reads as follows:

"When the Assessor furnishes the County Court the personal property lists with 44% of said lists being unsigned by property owners, is there any duty upon the County Court to question, or liability for failure to question, the Assessor on unsigned lists either with reference to Section 10949, Mo. Rev. Statutes 1939, relating to removal of the Assessor by the Court or any other section of the Statutes respecting criminal liability of the members of the County Court."

Some preliminary discussion will be required before we proceed with our examination and arrive at our conclusion. From the text of this inquiry we cannot discover whether 44% of the lists referred to have been signed by the assessor. The statement reads:

"When the Assessor furnishes the County Court the personal property lists with 44% of said lists being unsigned by property owners, \* \* \* ."

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Under the provisions of our statutes the assessor is under a duty to get a list covering all taxable personal property, or to make one himself. In the case of real estate he is required to put all real estate on his book from his own investigation of former tax books, maps, plats, records and other necessary information. Furthermore, he is required to return his book to the county board of equalization.

Because of the great length of the statutes involved and the decisions examined and other authorities consulted we do not set out in full the text, but merely cite same for your reference and study.

The office of the assessor is dealt with in Chapter 74, Article 2, of our Revised Statutes, and it is deemed necessary to say only that Sections 10945 to 10954 cover the provisions as to his term of office, oath, bond, time for making assessment, procedure in case of failure and a provision for his removal from office.

At Section 10081 R. S. Missouri, 1939, we find he is required to return his book to the county board of equalization, and at Section 10981 R. S. Missouri, 1939, another provision as to how he shall value and assess property. We cite the following cases which may interest you and that concern themselves with the questions as to procedure in the making of assessments. These decisions are State ex rel. Gottlieb v. Western Union Tel. Co., 165 Mo. 502, 65 S. W. 775; Hazard v. Barron, 36 F. 854; Wymore v. Markway, 89 S. W. (2d) 9, 338 Mo. 46; and Wyatt v. Hoyt, 27 S. W. 382, 123 Mo. 348.

An assessor is under a direct duty to get a list, or to make one covering the property in his county. This requirement may be found in Section 10954 R. S. Missouri, 1939. This section takes care of the situation where a taxpayer does not make out a return and in that instance we find the assessor may make a list on his own view. He is within the law when he files a list so made on his own view and information. From the decisions which we shall quote subsequently, this section is directory and not mandatory. The decisions in the following cases are the authorities for this observation: State ex rel. v. Carr, 77 S. W. 543, 178 Mo. 229; State v. Gomer, 101 S. W. (2d) 57, 340 Mo. 107.

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As to the relation between the county court and the assessor, we find with respect to the assessment, levy of taxes and establishment of rates, etc., that at Sections 11001 to 11008 provision has been made for county boards of equalization. Also, we find at Section 11040 R. S. Missouri, 1939, and 11042 R. S. Missouri, 1939, a detailed statement as to how taxes are assessed, levied and collected, and the further admonition that such assessment, levy and collection may not be made except as provided by statute.

Looking now to this question in your letter:

"Is there any duty upon the county court to question, or liability for failure to question, the Assessor on unsigned lists?"

It occurs to us that the fact that 44% of the lists are unsigned is sufficient notice to put the county court upon inquiry as to the method and procedure employed by your assessor in securing such lists. We shall find out later that the county court has the right to remove an assessor under certain conditions, and we believe the court has sufficient interests in the proper performance of his duty and that they are charged with the duty, the neglect or failure to perform which would result in a neglect of duty on the part of the court.

Section 10949 R. S. Missouri, 1939, states as follows:

"Every assessor who shall fail to perform any duty enjoined upon him by law, in the time prescribed, shall be removed 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 enter up judgment summarily upon the bond of such delinquent assessor, against him and his sureties, for such amount as shall be sufficient to complete the assessment of the county."

Before citation of authorities in which the removal of an officer is discussed, the writer concludes the rule to be this:

Where an officer is appointed, for no definite term, the power of appointment also carries with it the power of removal at the discretion of the appointing officer, without cause and without notice. We further find that where an officer has been elected to an office and the power of removal delegated, he can be dismissed only for cause and with notice. This doctrine is well sustained in the decisions and authorities we shall now cite. State ex rel Denison vs. St. Louis, 1 S. W. 757, 90 Mo. 1. c. 22; State ex rel. Mincke, et al., v. Sartorius, 95 S. W. (2d) 873; State v. Kemmers, 101 S. W. (2d) 1. c. 72.

In 15 C. J., par. 157, at page 494, the removal and suspension of officers is discussed at length. Also, in 46 C. J., par. 146, at page 984, the statement of the general rule in the United States and at common law. These cases are of particular importance and we now cite them: State v. Wells, 210 Mo. 601, 109 S. W. 758; State v. Davis, 44 Mo. 129; State v. Hedrick, 294 Mo. 21, 241 S. W. 1. c. 416; Williams v. St. Louis, 213 Mo. 403, 111 S. W. 1165; State v. Sheppard, 192 Mo. 497, 91 S. W. 477.

46 C. J., par. 151, page 987, provides us with information concerning the exact nature of wilful misconduct of an officer or such acts as would constitute neglect of an officer. Among other things discussed we find authorities for the statement: "Not every technical violation of a duty will justify a removal." State v. Zeigler, 199 Ia. 392, 202 N. W. 94; State v. Foley, 107 Kas. 608, 193 P. 361; Holliday v. Fields, 210 Ky. 179, 275 S. W. 642; Sharpe v. Brown, 38 Idaho 136; 221 P. 139.

We find it necessary to direct your attention to the section devoted to the necessity of a hearing in the event an officer is to be removed, and, in 46 C. J., par. 160, at page 989, this matter is covered in detail. It will be interesting and profitable to give you the following cases on this matter: State v. Crandall, 269 Mo. 44, 190 S. W. 889; State v. St. Louis, 90 Mo. 19, 1 S. W. 757; State v. Walbridge, 69 Mo. App. 657. Also see Mechem Pub-

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lic Officers, par. 444, at page 283, and Throop Public Officers, par. 364, at page 359.

At this point we make this observation: From a study and examination of previously quoted authorities, we have found the county court may remove an assessor for failure to perform any of the duties required of him. As to the constitutionality of such a statute, we are not in this instance concerned. Whether an officer removed under these conditions is entitled to a hearing, and to his day in court, we do not now discuss, because that is not raised in your inquiry. There may be some who would question this rule, and we leave it for further study and considerable research.

Having examined in detail the statutes and authorities above, we conclude:

1. An assessor may furnish a personal property list to the county court on his own information, where no list is filed by the taxpayer. See Section 10954 R. S. Mo., 1939.

2. The county court may remove an assessor from office for failure to perform any duty enjoined upon him by law. See Section 10949 R. S. Mo., 1939.

3. The county court under our statutes is required to insist that the assessor complete the assessment of the county, and if he fails to do so may enter up a judgment against him on his bond, and against his sureties for an amount sufficient to complete the assessment of the county.

Further, that judges of the county court are under a positive duty to insist that the statutory requirements be performed by the assessor and if in so doing members of the court refuse, fail or neglect their duty they may, under proper conditions, be charged in this connection with a neglect of duty the same as any other public officer.

APPROVED BY:

Respectfully submitted

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LIM:RW