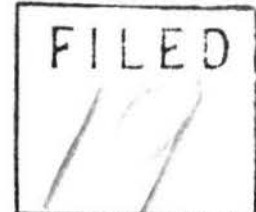


TAXATION:

County Board of Equalization or State Tax Commission may raise the assessment on the valuation of real property.

August 12, 1938

Honorable J. V. Conran
Prosecuting Attorney
New Madrid, Missouri



Dear Sir:

We acknowledge your request for an opinion dated August 4, 1938, which is as follows:

"In this County we have several tracts of land which are on the Assessment Books at a figure far below what they are worth. In one instance, we have a home in the City of New Madrid which is assessed at \$4800.00. The original cost of construction of this place was \$93,000.00, and the very minimum that it is reasonably worth today is \$25,000.00. We also have a half block of buildings in this town where a new picture show has been recently constructed, and many modern apartments built on the upper story, and several other office rooms modernized for rental purposes. All of this property is assessed at only \$9,000.00, and it is probable that a reasonable value for it would be around \$50,000.00.

"The County Court and several of the citizens of this County are anxious to know the proper procedure to compel the placing of this property on the tax books at a reasonable value in accordance with the assessment on other property in this County. So kindly advise what steps may be taken by the County Court and the citizens of this County in order to accomplish the

desired result. Would a mandamus suit lie against the property owners, the County Court, or the County Assessor to compel the correction of this inequality? Would it be better to proceed by way of filing affidavits with the State Board of Equalization, and, if so, what steps may be taken to compel them to act?"

Section 9811, R. S. Mo. 1929, reads as follows:

"There shall be in each county in this state, except the city of St. Louis, a county board of equalization, which board shall consist of the county clerk, who shall be secretary of the same, but have no vote, the county surveyor, the judges of the county court, and the county assessor, which board shall meet at the office of the county clerk on the first Monday in April of each year: Provided, that in any county having adopted township organization, the sheriff of said county shall be a member of said board of equalization; Provided further, that in counties containing a population of more than seventy thousand, such board shall meet upon the first Monday of March in each year."

Section 9812, R. S. Mo. 1929, reads as follows:

"Said board shall have power to hear complaints and to equalize the valuation and assessments upon all real and personal property within the county which is made taxable by law, and, having each taken an oath, to be administered by the clerk, fairly and impartially to equalize the valuation of all the taxable property in such county, shall immediately proceed to equalize the valuation and assessment

of all such property, both real and personal, within their counties respectively, so that each tract of land shall be entered on the tax book at its true value: Provided, that said board shall not reduce the valuation of the real or personal property of the county below the value thereof as fixed by said state board of equalization."

Section 9813, R. S. Mo. 1929, reads as follows:

"The following rules shall be observed by county boards of equalization: First, they shall raise the valuation of all such tracts or parcels of land and any personal property, such as in their opinion have been returned below their real value, according to the rule prescribed by this chapter for such valuation; but, after the board shall have raised the valuation of such real estate, it shall give notice of the fact, specifying the property and the amount raised to the persons owning or controlling the same, by personal notice, through the mail or by advertisement in any paper published in the county, and that said board shall meet on the fourth Monday of April, except in counties containing a population of more than seventy thousand and less than one hundred thousand, in which counties such board shall meet on the fourth Monday of March of each year, to hear reasons, if any may be given, why such increase should not be made; second, they shall reduce the valuation of such tract or parcels of land or any personal property which, in their opinion, has been returned above its true value as compared with the average valuation of all the real and personal property of the county."

Under the above sections the county court, the county clerk, the county surveyor, and the county assessor, sitting as a board of county equalization, have the power to raise or lower the valuation turned in by the county assessor, during their session as a board of equalization. They are only limited to the provision that they shall not reduce the valuation of real or personal property of the county below the value as fixed by the state board of equalization.

The property mentioned in your request, I presume, has been valued as set out therein and placed upon the tax rolls by the county assessor. If that is the case, the above mentioned county board of equalization may raise the valuation of the property by complying with the above set out sections, which are part of Article 3, Chapter 59, of the Revised Statutes of Missouri, 1929.

I am presuming that the county board of equalization met in April of this year and has adjourned. Under all of the authorities, the county board of equalization does not have the power at this time to raise the valuation of property for the year 1937 where the property has been placed on the tax roll at some valuation. This rule would not apply where the property was omitted by the county assessor.

Section 9854, R. S. Mo. 1929, reads as follows:

"It shall be the duty of the commission, and the commissioners shall have power and authority, subject to the right of the state board of equalization, finally to adjust and equalize the values of real and personal property among the several counties of the state, as follows:

* * * * *

"(3) To receive all complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, to investigate the same and to institute such proceedings as

will correct the irregularity complained of, if any irregularity be found to exist.

* * * * *

"(5) To furnish the state board of equalization at each session thereof a statement of the value of the taxable property in each county in the state, and, when so requested, to meet with the state board of equalization. The said statement herein referred to shall include a statement of the amount to be added to or deducted from the valuation of the real and personal property of each county, specifying the amount to be added to or be deducted from the valuation of the real or personal property, to the end that the state board of equalization may adjust and equalize the valuation of real and personal property among the several counties in the state as is provided by law.

* * * * *

"(8) To raise or lower the assessed valuation of any real or personal property, including the power to raise or lower the assessed valuation of the real or 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 section 9855."

In view of Section 9854, if the county board of equalization refuses to give a fair valuation for the true value of the property, while meeting as a board of equalization, then it would be proper for anyone to complain to the state tax commission, who, in accordance with Section 8954, supra, may raise or lower the assessed valuation of any real or personal property of any individual, copartnership, company, association or corporation. Their decision in the matter is subject to the right of the state board of equalization finally to adjust and equalize the values of real and personal property among the several counties of the state.

The state board of equalization is organized solely under the powers granted them by Article X, Section 18, of the Constitution of the State of Missouri, which reads as follows:

"There shall be a State Board of Equalization, consisting of the Governor, State Auditor, State Treasurer, Secretary of State and Attorney-General. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties in the State, and it shall perform such other duties as are or may be prescribed by law."

The session of the state board of equalization is governed and controlled by Section 9862, R. S. Mo. 1929, which reads as follows:

"The board shall meet at the capitol in the City of Jefferson on the last Wednesday in February, 1894, and every year thereafter, the majority of whom shall constitute a quorum, and the members thereof shall each take an oath or affirmation that he will, to the best of his knowledge and ability, equalize the valuation of real and personal property among the several counties in the state, according to the rules prescribed by this chapter for equalizing

and valuing real property; and the secretary of the board shall keep an accurate account of all their proceedings and orders, and file the same, together with all their papers, in the office of the state auditor."

You also inquire in your request if mandamus proceedings would lie against the property owners, the county court, or the county assessor to compel the correction of the inequality of the assessment. Mandamus is not the proper remedy and does not issue where there is another adequate remedy. This was so held in the case of State ex rel. v. Hudson, 226 Mo. 239. Under the facts in your request, there are two adequate remedies to compel an equal assessment of the property in your county.

Mandamus also will not lie to control the exercise of judicial discretion in the absence of any abuse thereof. This was so held in the case of State ex rel. v. Thompson, 190 Mo. App. 12.

In the case of State ex rel. v. West, 272 Mo. 304, the court held that mandamus would not lie in a discretionary matter or for the enforcement of any judicial or quasi judicial matter, and only should be issued where the duty or action sought to be compelled was solely ministerial.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the proper and most convenient method of having the property described in your request assessed at a fair and equal value would be to have the matter adjusted by the county board of equalization, and if their procedure is not satisfactory, to have the matter adjusted by the state tax commission by way of the state board of equalization and state auditor.

It is also the opinion of this department that mandamus will not lie against the property owner, the county court, or the county assessor to compel the correction of this inequality, but may be used by the state auditor if any property is omitted from the tax rolls by the county assessor. In the case of omission of the property from the county tax rolls, the proper method would be a complaint before the state tax commission through the state board of equalization and the state auditor. In that case if the county assessor would refuse to place the property as assessed by the state tax commission upon the tax rolls, the state auditor, by mandamus, may compel the performance of this ministerial act by the county assessor.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:HR