

TAXATION AND EQUALIZATION: County Board not bound by valuations of tracts fixed by the Assessor.

June 5, 1941

6-11



Honorable W. N. Doss
Secretary
State Tax Commission
Capitol Building
Jefferson City, Missouri

Dear Mr. Doss:

The writer has been directed to furnish you with an opinion upon the following question:

"First: Does the County Board of Equalization have authority to increase the valuation on real estate above the valuation placed thereon by the assessor?"

Article 3 of Chapter 74, Revised Statutes of Missouri, 1939, creates the County Board of Equalization for each county and prescribes its powers and duties. A search of the constitution reveals there is no provision in the constitution concerning a County Board of Equalization. Therefore, it is solely a statutory body and in considering its duties and powers, we must look to the statutes and cases construing these statutes.

Section 11001, Article 3, Chapter 74, R. S. Missouri, 1939, creates the County Board of Equalization; Section 11002, of the same Article and Chapter prescribes its duties and powers. This last mentioned section is 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 11003 of the same article and chapter prescribes the rules to be followed by County boards of equalization and Section 11004, also of the same article and chapter, grants to the county boards of equalization jurisdiction to hear appeals of persons who wish to have the valuation placed on their property by the assessor reviewed. Section 11004 is as follows:

"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."

The County Board of Equalization, in performing its duties, acts judicially. In this connection the case of *Black v. McGonigle*, 103 Mo. 192, is cited, from which case the following quotation is taken at l. c. 198:

"The propositions contained in this objection must, of course, be determined by the statute. Section 6672, Revised Statutes, 1879, gives to the board power 'to hear complaints and to equalize the valuation and assessments upon all real and personal property within the county,' and it is then made the duty of the board 'to equalize the valuation and assessment of all such property, both real and personal * * *, so that each tract of land shall be entered on the tax book at its true value.' 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 be performed 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. The board has jurisdiction over all the lands in the county, and generally in practice its actions will be confined to raising and decreasing the assessed value of particular parcels, so as to bring all the lands in the county to a uniform value. The law, however, clearly contemplates that all property shall be assessed at its true value (sec. 6711), and if, in the opinion of the board, this has not been done, then

the assessment may be increased so as to comply with the spirit and intention of the law. * * * * *

From the foregoing quotation it is apparent that the County Board of Equalization not only acts judicially, but that it may on its own motion change the valuation placed on real estate upon the assessment rolls.

In the case of State ex rel. Thompson, State Auditor v. Bethards, County Clerk, the Supreme Court had before it a question involving the power of the County Board of Equalization and the performance of its duties in connection with the equalization of real estate values. This case was decided by the Court in Banc in October, 1928, and is reported in volume 9 Southwestern Reporter, 2nd Series, page 603 and following. In discussing the valuation placed upon real estate by the assessor and the action of the County Board of Equalization and the State Board of Equalization, the Court, at l. c. 604, said:

"There is no such thing as an absolute true value of land. The 'values' mentioned in the statutes are the valuations of the officials whose duty it is to make them. Land is not like commodities which have a fixed market price at a given period. Its value is determined always by the estimate of the party who values it. The requirement of section 12802, that the assessor assess the property at its true value in money, means nothing more than that such true value is his estimate, his valuation. The law contemplates that, in accordance with that section, he does assess it at its true value as he judges it. State ex rel. v. Western Union Tel. Co., 165 Mo. loc. cit. 516, 65 S. W. 775. The allegation of the petition that he assessed it at its true value adds nothing to the general statement that he assessed it according to that section. To say that he

assessed it at a certain value means that such is the true value just as clearly as if the words 'at its true value in money' were added to the statement. According to the argument of respondent, such valuation is absolute and could never be questioned by any board of equalization. Yet the statute provides that the county board of equalization may equalize such valuations, and that the state board of equalization, under section 12855, may add to the valuation of each class. The presumption that such added valuation is the true value attaches just as well to the action of the state board of equalization and county board of equalization as it does to the valuation of the assessor. The allegation of the petition as to the true value in money is merely an allegation that the assessor performed his duty as required by section 12802, and nothing more. It is not conclusive on either the county board nor on the state board."

This case also contains an illuminating discussion of the procedure to be followed in the process of equalization, at l. c. 605:

"The regular course is as follows: After fixing the valuation under section 12802, the assessor makes an abstract of his footings and forwards the same to the state auditor. Section 12810, R. S. 1919. The clerk is liable to a penalty if he fails to do that. And when erroneous assessments are corrected by the county court for persons who make complaints (section 12817), the clerk shall correct the tracts on the books under orders made by the county court (section 12818).

"The state auditor, under section 12855, must lay before the state board of equalization the abstracts of all the taxable property of the state returned to him by the respective county clerks. The state board then equalizes the valuations of property between the several counties. Under section 12857, when the state board of equalization shall have completed its labors, it must transmit to each county clerk the per cent, added to or deducted from the valuation of the property of his county. Then the clerk shall furnish one copy thereof to the assessor, and one copy shall be laid before the annual county board of equalization. In this case the copy laid before the county board of equalization was the one upon which that board acted without authority, as noted above."

The question involved in this case was whether or not the County Board of Equalization had the power and authority to reduce the valuation of real estate below that fixed by the State Board of Equalization. The court, in ruling that it had no authority to reduce the valuation below that set by the State Board of Equalization, at l. c. 605, said:

"After the state board of equalization had increased the valuations of lands in the county, the county board of equalization then took a hand, as shown in the order quoted above, and in effect sought to annul the action of the state board of equalization. That is directly in the face of the proviso of section 12821, defining the powers of the county board of equalization as follows:

"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."

"That section means, if anything, that the state board of equalization fixes values as well as the assessor of the county board. Therefore the county board of equalization of Shelby county had no authority to reduce the valuation fixed by the state board. When it attempted to equalize the values in accordance with the prior valuations fixed by the assessor, which valuations had been annulled by the order of the state board of equalization, the proceeding was a nullity. The entire proceeding of the county board in the matter was of no effect. Mercantile Trust Co. v. Schramm, 269 Mo. 489, 190 S. W. 886."

And on the same page the court further said:

"The county board of equalization, under article 3, c. 119, sec. 12821, is authorized to hear complaints and equalize valuations made by the assessor. It is nowhere authorized to increase or reduce the aggregate valuation fixed by the state board of equalization. It has no power to assess. State ex rel. v. Baker, 170 Mo. loc. cit. 391, 70 S. W. 872. Its duty is to equalize among the separate tracts the valuations fixed by the assessor. * * * * *

From the above it seems quite clear that the County Board is not bound by the valuation placed upon parcels of real estate by the assessor; that the assessor values the

Hon. W. N. Doss

(8)

June 5, 1941

parcels of real estate according to his judgment which is not final or binding on the County Board of Equalization and that the Board may later exercise its judicial discretion in the valuation of the tracts of real estate, subject only to the qualification that the County Board of Equalization must abide by the class valuations as fixed by the State Board of Equalization.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

WOJ/rv