

TAXATION AND EQUALIZATION:

State Board of Equalization may reconsider valuation of class of property before certification of its judgment; but has no power to review its judgment after certification by State Auditor except by way of approving recommendations of State Tax Commission

June 7, 1941

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

Dear Mr. Doss:

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

"Is the State Board of Equalization authorized to reconsider the assessment and valuation of a class of property in a county?"

The State Board of Equalization is a constitutional body, being created by Section 18 of Article X of the Constitution. This section is 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 Constitution contains no further provisions in regard to the State Board of Equalization or its powers and duties and methods of carrying out the direction of the Constitution. However, the Legislature has enacted numerous laws pertaining to the State Board of Equalization and the performance of its duties. These laws are found in Article V of Chapter 74, Revised Statutes of Missouri, 1939. Section 11034 grants to the State Board of Equalization authority to issue subpoenas, send for persons, take evidence it may deem necessary to ascertain the value of the property in the different counties in the State. Section 11035 fixes the time of the meeting, the last Wednesday in February of each year. Section 11036 prescribes the duties of the State Auditor in connection with the meeting of the State Board of Equalization and prescribes the procedure to be followed by the State Board of Equalization in performing its duties. This section is as follows:

"The state auditor shall lay before the board of equalization the abstracts of all the taxable property in the state and the abstracts of the sales of real estate in such counties as returned to him by the respective county clerks and the president of the board of assessors of the city of St. Louis, and the board shall classify all real estate situate in cities, towns and villages as town lots, and all other real estate as farming lands, and shall classify all personal property as follows: First, banking corporations; second, railroad corporations; third, street railway corporations; fourth, all other corporations; fifth, bonds, notes and evidences of indebtedness; sixth, horses, mares and geldings; seventh, mules; eighth, asses and jennets; ninth, neat cattle; tenth, sheep; eleventh, swine; twelfth, farm implements and all other personal property. And the board shall proceed to equalize the valuation of each class thereof among the respective counties of the state in the following manner:

"First -- It shall add to the valuation of each class of the property, real or personal, of each county which it believes to be valued below its real value in money such per centum as will increase the same in each case to its true value.

"Second -- It shall deduct from the valuation of each class of the property, real or personal, of each county which it believes to be valued above its real value in money such per centum as will reduce the same in each case to its true value."

In the case of State ex rel. Wyatt, Collector v. Vaile, 122 Mo. 33, the Supreme Court, at l. c. 47, held the State Board of Equalization, in performing its duties, acted judicially.

"A board of equalization in performing its duties, acts judicially, and its orders can not be impeached collaterally, save for want of jurisdiction or for fraud. Black v. McGonigle, 103 Mo. 193, and cases cited; Black on Tax Titles (2 Ed.), sec. 141. But it is a board of special and limited powers, and when it steps outside of its jurisdiction its acts are void. We can but conclude that the state board had no power to make these orders and that they are void. The question then arises what is to be the effect of this conclusion upon the judgment in this case, the taxes having been extended on the assessment as decreased by these void orders of the state board."

At the time of the rendition of the decision in the case of State ex rel. v. Vaile, supra, the State Board of Equaliza-

tion was limited to equalizing values between counties but by amendment its powers were extended to permit it to equalize between classes.

In the case of *Mercantile Trust Company v. Schramm*, 269 Mo. 489, the court said, at l. c. 495:

"It is these provisions, in the light of those in pari materia, that we are called upon to construe. It is not questioned that, under the provisions of this section not quoted, the State Board of Equalization can equalize according to classes as it did in the instant matter. This power was expressly confirmed by the amendment of 1899, prior to which time its power was limited to equalizing among the different counties and not between classes. (*State ex re. v. Vaile*, 122 Mo. 33). * * * *"

Inasmuch as the State Board of Equalization acts judicially, has authority to equalize between classes of property and is authorized to hear, take evidence, et cetera, to determine the proper valuation, it is not believed there would be any question of the power of the Board to take up and reconsider the valuation of a class of property in order to determine its true value in money prior to its final determination and judgment and certification to the county. We fail to find where this power has ever been questioned. In the case of *Columbia Terminals Co. v. Koeln*, 3 S. W. (2d) 1021, the State Board of Equalization did this and there was no criticism of its action and no question raised.

Section 11038, Article V, Chapter 74, R. S. Missouri, 1939, directs the procedure after the State Board of Equalization had completed its work. This section is as follows:

"When the state board of equalization shall have completed its labors, the state auditor shall immediately transmit to each county clerk the per centum

added to or deducted from the valuation of the property of his county, specifying the percentage added to or deducted from the real property and the personal property respectively, and also the value of the real and personal property of his county as equalized by said board; and the said clerk shall furnish one copy thereof to the assessor; and one copy to be laid before the annual county board of equalization. And it shall be the duty of the state auditor to require of clerks of the several county courts of this state to keep up the aggregate valuation of real and personal property in their respective counties, for those years in which no state board of equalization is held, to the aggregate amount fixed by the last state board of equalization."

It will be observed that this section requires the valuations, as fixed by the State Board of Equalization, to be certified to the various county clerks by the State Auditor when completed. This brings us to a consideration of whether or not the State Board of Equalization would have authority to re-open its proceedings and again consider the matter of the valuation of a class of property in a county after the valuation had been certified to the county by the State Auditor. A search of the cases fails to reveal any case in which this question has been raised, although in the case of *State ex rel. v. Dirckx*, 11 S. W. (2d) 38, a case involving the valuation of bank stock in Cole County, the State Board of Equalization apparently had taken up and reconsidered the valuation after certification and caused to be recertified a lower valuation than the valuation contained in the original certification. The court said, at l. c. 40:

"Prior to the making of the order just set forth, the state board of equalization, on March 28, 1938, in

equalizing the values of the various classes of property among the respective counties of the state, raised the aggregate valuation of the personal property of banks and trust companies of Cole county from \$554,336 to \$630,836, and duly transmitted its order with reference thereto to respondent as county clerk. Subsequently, on May 16, 1928, the state board amended its order, thereby fixing the aggregate valuation of the personal property of the banks and trust companies of Cole county at \$554,336, being the aggregate of such assessments as originally made by the assessor. This amended order it likewise transmitted to the respondent.

"Respondent refuses to correct or adjust the assessor's books of Cole county so that they will conform to the order of the state board of equalization, giving as his reason therefor that he cannot do so without doing violence to and disobeying the order and judgment of the county board of equalization, which he believes and alleges to be a valid and legal order and judgment.

"From the foregoing it is manifest that either the state board of equalization or the county board has exceeded its statutory jurisdiction, or else the statutes themselves engender an irreconcilable conflict. In order to determine where the fault lies it will be necessary to make a brief examination of the statutory scheme of assessing property for the purpose of levying ad valorem taxes."

The Supreme Court issued its writ of mandamus to compel the county clerk to adjust the tax books to conform to the last order of the State Board of Equalization. It is doubtful if

this could be considered authority for such procedure, inasmuch as the question was not raised as to the authority of the Board to make such second order.

In the case of State ex rel. City of St. Louis v. Caulfield, et al., 62 S. W. (2d) 818, a case involving the State Board of Equalization, the Supreme Court, in discussing the State Board of Equalization and its duties, said at l. c. 820-1:

"This board is an agency created by the Constitution of the state, section 18 of article 10, which declares: '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 duties enjoined on the board are set out in article 5 of the chapter on taxation and revenue, at page 2705 of the Revised Statutes of 1929 (section 9861 et seq. (Mo. St. Ann. sec. 9861 et seq.)), which requires that the board meet at the capitol on the last Wednesday in February of each year, and, after taking oath according to law (section 9862 (Mo. St. Ann. sec. 9862)), proceed to equalize the valuation of each class of real and personal property among the counties of the state (city of St. Louis being regarded as a county) by adding to or deducting from each class such per centum as will increase or decrease the same to its real value in money (section 9863 (Mo. St. Ann. Sec. 9863)); and upon the completion of the board's labors the state auditor shall transmit to each county clerk the per centum added to or deducted from the real and personal property and also value the real and personal property as equalized by said board, and the same shall be laid before the assessor and the county board of equalization (sec-

tion 9865 (Mo. St. Ann. sec. 9865)). In neither said constitutional provision nor in said article 5 is any power conferred upon said board with respect to real or personal property other than the power to equalize the valuations of the same, in their statutory classifications, among the counties, nor any power or original assessment of such property.

"In the case of *First Trust Company of St. Joseph v. Wells*, 324 Mo. 306, at page 312, 23 S. W. (2d) 108, 110, in discussing the respective powers of the state and county boards of equalization, this court, speaking through Ragland, J., said: 'The functions of the county board of equalization and the state board of equalization are entirely separate and distinct. The county board's authority is limited to equalizing valuations of property within a class, and in doing so it can neither raise nor lower the aggregate valuation of a class as a whole. *State ex rel. v. Dirckx*, 321 Mo. 345, 11 S. W. (2d) 38. The state board's authority is limited to the equalization of the valuation of each class as a whole among the respective counties of the state. In so doing it equalizes the valuations of the several classes with respect to each other, because the "real value in money" is the standard applied to all. It has no power to raise or lower the valuations of specific properties within a class. *State ex rel. v. Vaile*, 122 Mo. 33, 26 S. W. 672.' Regarding the county board's powers, it is provided by statute that such board has no power to reduce the valuation of real or personal property of the county, because the valuation thereof is fixed by said state board. R. S. 1929, section 9812 (Mo. St. Ann. Sec. 9812). Our court has

held that the county board has no power to reassess, State ex rel. v. Bethards, 320 Mo. 1164, 9 S. W. (2d) 603, and no power to make an initial assessment except upon omitted property, State ex rel. Davis v. Walden (Mo. Sup.) 60 S. W. (2d) 24.

"It therefore seems clear that under the constitutional provision and the statutes mentioned the state board of equalization has no greater power of original assessment of real and personal property than is possessed by the bounty board. There is also an apparent legislative purpose that the judgment of equalization made by the state board for the purpose of uniformity of valuation as among the counties and transmitted to the counties for the guidance of the county boards, which completes the regular process of valuations throughout the state and establishes uniformity, shall not be interfered with by any other agency. The process having by that judgment become exhausted, the state board's jurisdiction is also exhausted, except for the board's revision to meet the requirements of the action of the tax commission in making thereafter those original assessments and such reassessments as the law empowers it to make, all subject to the approval of said state board of equalization. And, necessarily, this reserved jurisdiction is no broader than said board's original jurisdiction, as conferred by the Constitution, namely, the power of equalization, among the counties, unless perchance the statutes next to be mentioned confer additional powers."
(Underscoring ours)

In this case the power of the board to reopen and reassess or revalue a class of property was not in question, but this language would seem to clearly indicate the view of the Supreme Court that once having rendered its judgment the State Board of Equalization has exhausted its jurisdiction in a matter unless the matter is placed before it again by the State Tax Commission, where its authority is limited to approving or disapproving the recommendation of the Tax Commission in matters of assessing or reassessing omitted property. This language is supported by the rule that administrative officers and boards having quasi judicial power or special jurisdiction are not authorized to review their judgments unless the authority which gave the officer power, or created the board, expressly conferred authority to review.

In *Cress v. State*, 152 N. E. 822 (Ind), the Court, in discussing the power of an officer to undo an act completed, said at l. c. 826:

"And power to undo an act once done will not be implied from the mere grant of power, in the exercise of a sound discretion, to do the act."

In *Throop's Public Officers*, Section 564, p. 534, it is stated:

"* * * where a quasi judicial power has been exercised, upon which a private individual has acquired rights, the rule is the same, as where a judgment has been rendered by a court of inferior and limited jurisdiction; that is, that the officer or body can exercise the power only once, and can not afterwards alter his or its decision."

In *People v. Cantor*, 180 N. Y. S. l. c. 155, it is also said:

"It is true that, where quasi judicial power is conferred upon an administrative officer or body, the exercise of such power is not generally subject to review by the official or board making the determination, unless the power of review is also conferred by the Statute." (cases cited).

This was a case involving the action of a board of equalization.

This requires an examination of and consideration of the sections of the statutes creating the State Tax Commission and setting out its powers and duties. These sections of the law are found in Article IV, Chapter 74, Revised Statutes of Missouri, 1939. Section 11009 creates the State Tax Commission. Section 1010. Section 11027 of this article and chapter sets out numerous duties of the Tax Commission, and is as follows, in part:

"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:

"(1) To have and exercise general supervision over all the assessing officers of this state, over county boards of equalization and appeal in the performance of their duties, and to take such measures as will secure the enforcement of the provisions of this article, and all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed in accordance with the letter and plain provisions of the law.

"(2) To confer with and advise assessing officers as to their duties under this article

and all other laws concerning revenue and taxation, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this article, or of the revenue and taxation laws. In the execution of these powers the said commission shall call upon the attorney-general, or any prosecuting or circuit attorney in the state, to assist this commission in the enforcement of laws with the supervision of which this commission is charged, and when so called upon it shall be the duty of the attorney-general, and the prosecuting (or circuit attorneys in their respective counties), to assist in the commencement and prosecutions of actions and proceedings for penalties, forfeitures, removals and punishments for violation of the laws in respect to the assessment and taxation of property, and to represent the commission in any litigation which it may wish to institute or in which it may become involved in the discharge of its duties.

"(5) 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.

"(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 11028.

* * * * *

There are several other subsections of Section 11027 but they do not seem to be pertinent to the matter under consideration here and for that reason are not set out.

Section 11028 also of the same article and chapter, sets out the procedure to be followed by the Tax Commission in the matter of assessing omitted property and reassessing property it finds to have been improperly assessed. This section is as follows:

"After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof, and in case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the

said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, said time to be not less than five days from the date of the issuance of said order, and the place to be at the office of the county court at the county seat, or at such other place in said county in which said roll was made as the commission shall deem most convenient for the hearing herein provided. A copy of said order shall be published in at least one newspaper published in said county, if there be one, at least five days before the time at which said assessor is required to appear; or, where practicable, notice by mail may be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall be served on the assessing officer at least three days before he is required to appear with said roll. The commission, or any member thereof, or any duly authorized agent, shall appear at the time and place mentioned in said order, and the assessing officer, upon whom said notice shall have been served, shall also appear with said assessment roll. The commission, or any member thereof, or any duly authorized agent thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected, or liable to be affected by review of said assessments thus provided for, may appear and be heard at said hearing. In case said commission or any member or agent thereof who is acting in said review, shall determine that

the assessments so reviewed are not made according to law, he or they shall, in a column provided for that purpose, place opposite said property the lawful valuation of the same for assessment. As to the property not upon the assessment roll, the said commission, or member or agent thereof, acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter in the proper column the value required by law for the assessment of said property. The commission shall also spread upon said roll a certificate signed by each member officiating at the proceeding showing the day and date on which said assessment roll was reviewed. For appearing with said roll as required herein the assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the county board of equalization. His claim shall be presented to and paid by the proper officer of the political subdivision, or municipality, of which he is the assessing officer, in the manner as his other compensation is paid. The action of the commission, or member or agent thereof, when done as provided in this section, shall be final, when approved by the state board of equalization. When any property has been reviewed, assessed and valued by the commission as herein authorized, such property shall not be assessed or valued at a lower figure by the local assessing or equalizing officer for the year the assessment is made."

It will be noted that this last quoted section authorizes the State Board of Equalization to approve such assessing of omitted property or reassessing of property improperly assessed by the State Tax Commission, this in accordance with Section 18

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of Article X of the Constitution creating the State Board of Equalization which authorizes the legislature to place additional duties on the State Board of Equalization.

Neither Section 18 of Article X of the Constitution, which creates the State Board of Equalization and prescribes its duties and authorizes the Legislature to prescribe additional duties, nor the provisions of the statutes found in Article V of Chapter 74, R. S. Missouri, 1939, authorizes the State Board of Equalization to reconsider its valuation of a class of property in a county, except by way of approving or disapproving the recommendation of the State Tax Commission, as is provided in Article IV, Chapter 74, Revised Statutes of Missouri, 1939.

CONCLUSION.

It is the conclusion that prior to final certification the State Board of Equalization may reconsider its valuation of a class of property in a county; that after certification by the State Auditor the State Board of Equalization has no power to reconsider its valuation, except by way of putting into effect the recommendation of the State Tax Commission in the matter of assessing omitted property or reassessing property improperly assessed.

Respectfully submitted,

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APPROVED:

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WOJ/rv