TAXATION: Assessment of taxes by cities may not be in excess
ASSESSMENT: of the valuations fixed for state and county purposes.

FILED
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December 9, 1947

12/15

Hon. J. R. Eiser
Prosecuting Attorney
Holt County
Oregon, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you submit a request for an official opinion on the following question:

> "The other question involved is can the City, which has no assessor, put this property on its tax books when the State and County do not have the property on their books, and is not on the list which is certified to the City by the County Clerk?"

It appears from the statement of facts which you have submitted that the city has attempted to place upon the tax books for city taxes, property which has not been certified to it by the county clerk. Under the law, it is the duty of the county clerk to certify to the respective cities the valuations of properties in such cities as fixed by the board of equalization. Section 11 (a) of Article X of the Constitution of 1945, provides as follows:

> "Taxes may be levied by counties and other political subdivisions on all property subject to their taxing power, but the assessed valuation therefor in such other political subdivisions shall not exceed the assessed valuation of the same property for state and county purposes."

It will be noted that by this constitutional provision, political subdivisions are limited in the valuations which they place on property for taxing purposes to the assessed valuation on such property which is fixed for state and county purposes. This provision of the Constitution is taken from Section 11 of Article X of the Constitution of 1875, and seems to be more specific in limiting the cities to the valuations fixed by county courts than did the Constitution of 1875. However, under the Constitution of 1875, the courts

held that cities were limited to the valuations fixed by the county board of equalization. Section 7144, R. S. Mo. 1939, which relates to cities of the fourth class, was an enabling act for said Section 11 of Article X of the Constitution of 1875. This section, after the adoption of the 1945 Constitution, has not been repealed or amended. We think this section is still in full force and effect. It provides in part as follows:

> "In assessing property, both real and personal, in cities of the fourth class, the city assessor shall jointly, with the county assessor, assess all property in such cities, and such assessment, as made by the city assessor and county assessor jointly and after the same has been passed upon by the board of equalization, shall be taken as a basis from which the board of aldermen shall make the levy for city purposes. The assessment of the city property, as made by the city and county assessor, shall conform to each other, and after such board of equalization has passed upon such assessment and equalized the same, the city assessor's books shall be corrected in red ink in accordance with the changes made by the board of equalization, and so certified by said board, and then returned to the board of aldermen: Provided, that in cities which do not elect an assessor the mayor shall procure from the county clerk of the county in which such city is located, and it shall be the duty of such county clerk to deliver to the mayor on or before the first day of July of each year a certified abstract from his assessment books of all property within such city made taxable by law for state purposes, and the assessed value thereof as agreed upon by the board of equalization, which abstract shall be immediately transmitted to the council, and it shall be the duty of said council to establish by ordinance the rate of taxes for the year. * * * * * * * * * * "

It will be noted that this section provides that the assessment of the city property shall conform to the assessment made by the county board of equalization.

This section was before the Supreme Court in the case of State ex rel. vs. Mining Co., 262 Mo. 490. In that case, the court held that the valuation of property for city taxes can

not exceed the valuation of the same property for state and county purposes. In the case of State ex rel. Flaugh vs. Jaudon, 286 Mo. 181, the court, in discussing the city's tax scheme and its duty to place valuations upon the property to conform to state and county valuations, said, l.c. 197:

> "* * * There is nothing therein to compel the city to adopt the valuation for state and county taxes. There is much therein tending to show that it was intended to fit in with the state scheme. The City Assessor must take as a basis the property on hand as of the first of January, it is true, whilst the State takes the property as of the first of June proceeding. But even then, the City Assessor, by the Constitution, could not exceed the value fixed for state and county purposes. * * * * * * * "
> (Underscoring ours.)

It will be noted that the court in this case said that the valuation put on city property by the city assessor under the Constitution could not exceed the valuation fixed for state and county purposes. We think the foregoing constitutional and statutory provisions, together with the two opinions of the court referred to, clearly demonstrate that the valuation of property for taxing purposes, fixed by city officials in a city of the fourth class, can not exceed the valuation fixed by the county board of equalization for state and county purposes.

CONCLUSION

From the foregoing, it is the opinion of this department that a city of the fourth class may not add omitted property to tax rolls certified by the County Clerk or place a valuation on property for tax purposes at a greater amount than that fixed by the county board of equalization for state and county purposes.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

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ttorney General

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