

TAXATION-SCHOOL DISTRICT: Assessor's duty to indicate district whose land is located in making out list; Sec. 9261, R.S. Mo. 1929 applies only to personal property.

5-14

May 1, 1934.



Honorable S. T. McIntyre,  
Assessor of Marion County,  
Hannibal, Missouri.

Dear Sir:

This department is in receipt of your letter dated February 8, 1934, wherein you state as follows:

"Referring to Hon. Walter G. Stillwell's letter of December 7, 1933 and also December 28, 1933 to you in regard to School Districts 58 and 59 (Marion County) in which he requested an opinion as to whose duty it is to keep a record of the several school districts.

"You held that this was the duty of the Assessor's office--which I question. It is a fact that there was changes made in districts 58 and 59, or at least there was an attempt made to change these two districts. It was brought out at a meeting of these two districts last night that at no time was the Assessor's office ever consulted about the boundary lines or the land which was consolidated, district 59, until after two years from the time of this consolidation.

"While in Jefferson City some time back I had a talk with Mr. Oliver W. Nolan, Assistant Attorney General, and he advised me to take up with your office any part of this opinion that was not clear. I am, therefore, setting up two sections in question. I would appreciate having an answer and in addition will make a further request to ask, in case of any consolidation or changes in common school districts whose duty is it to make the changes on the plats or the Assessor's and tax books?

"Section 9315 reads that the district clerk shall record the copy of all reports made by him to the county superintendent. He shall also record in the record book of the district a correct plat of the district, changing the same as often as alteration is made in the boundary lines by the proper authority and shall furnish the county clerk and the county superintendent with copies of the same and shall officially notify them of any change whenever made.

"From the above section I am at a loss to know how the Assessor would ever know what boundary lines were changed when he was never notified by the school district or any statute where the clerk of the school district was required to furnish the Assessor with this information.

"In view of Section 9315 are you quite sure that it is the duty of the Assessor's Office to keep a record of the different school districts when there is no provision made for the district clerk to notify him of any changes made in any particular district? The change in the two districts now in question was not brought to the attention of the Assessor until September, 1933 and neither did I know what lands were taken in this consolidation, as I was at no time consulted in regard to any of the boundary lines and had no way of knowing of any changes being made.

"It is possible that I have failed to find the statute wherein I should have sought the information as to the boundaries of the two school districts in question other than the previous assessment book, which showed them to be in the district they were always in. If there is such a statute I would be pleased to have you quote me same. Section 9261 sets out the duties of the county clerk and in the last part of this statute it reads: It shall be the duty of the county assessor in listing property to take the number of the school district in which said tax-payer resides at the time of making his list to be by him marked on said list and also on the personal assessment book, which I do, and which I firmly believe applies only to personal property and in no way applies to real estate.

"I am very anxious to get this matter straightened out and if it is the duty of the Assessor's office or not the duty but if there is some authority for the assessor to request the clerks of the different school districts for the plat of their district. I will be very glad to do the same."

Your question reads as follows: "In case of any consolidation or changes in common school districts, whose duty is it to make the changes on the plats or the Assessor's and tax books?"

Section 9353, R.S. Mo. 1929 provides in part as follows:

\*\*\*\*The county superintendent shall file a copy of the petition and of the plat with the county clerk and shall send or take one plat to the special meeting. \*\*\*\*The county superintendent shall proceed as above set forth and in addition shall file a copy of the petition and of the plat with the county clerk of each county from which territory is proposed to be taken: \*\*\*\*

Under the foregoing section, which applies to consolidated schools, it is the duty of the county superintendent to file with the county clerk the plat which sets forth the limits and boundaries of districts and the land contained therein, and to make all necessary changes on the plats.

Section 9315, R.S. Mo. 1929, applies to common schools and provides as follows:

"The district clerk shall record a copy of all reports made by him to the county superintendent. He shall also record in the record book of the district a correct plat of the district, changing the same as often as alteration is made in the boundary lines by the proper authority, and shall furnish the county clerk and county superintendent with copies of the same, and shall officially notify them of any change whenever made."

Under the foregoing section, if the district is a common school district, it is the duty of the clerk to file the plat with the county clerk; and to make all necessary changes on the plats.

If the district is a consolidated district, it is the duty of the county superintendent to make all necessary changes on the plat, and if it is a common school district, it is the duty of the district clerk to make the necessary changes on the plat.

Section 9769, R.S. Mo. 1929 provides for the delivery of books to the assessor and for their return to the county clerk, reading in part as follows:

"The clerk of the county court shall deliver to the assessor \*\*\*\* the assessor's book of last assessment of real estate, and the list of taxable lands furnished by the register of lands. and take his receipt therefor: and

the assessor, as soon as he shall have completed his assessment and made his assessor's books for the year, shall return the whole of such papers and documents to the clerk."

Section 9778, R.S. Mo. 1929 provides that the assessor's book is to be made, and reads as follows:

"The assessor, on examination and comparison of the list of property delivered by individuals, and the list of lands furnished by the secretary of state, and said maps and plats, and after diligent efforts for ascertaining all taxable property in his county, shall make a complete list of all the taxable property in his county, to be called the assessor's book."

This section sets out the manner in which an assessor's book is to be made and provides, among other things, that the assessor shall make an examination of maps and plats and make a diligent effort to ascertain all taxable property in his county.

Section 9261, R.S. Mo. 1929, among other things, provides as follows:

\*\*\*\*it shall be the duty of the county assessor in listing property to take the number of the school district in which said taxpayer resides at the time of making his list, to be by him marked on said list, and also on the personal assessment book, in columns provided for that purpose."

In the case of School District v. Bowman, 178 Mo., l.c. 658, Marshall, J., said:

"Primarily the assessment and collection of taxes are proceedings in rem. Therefore, where the property is actually located is the place where the assessment is made and the tax collected. It is, of course, competent for the Legislature to prescribe where personal property shall be assessed and taxed, and when the Legislature has so prescribed, such regulations must be followed. But when the statute is silent, the ordinary rules of law must obtain."

Sec. 9745, R.S. Mo. 1929 provides in part as follows:

"All personal property of whatever nature and character, situate in a county other than the one in which the owner resides, shall be assessed in the county where the owner resides, except as otherwise provided by section 9763;"

In the case of State ex rel. v. Shepherd, 218 Mo. 656, the Court said (l.c. 663):

"It is conceded by counsel for both appellant and respondent that personal property is taxable at the domicile of the owner and in the school district in which he resides".

#### CONCLUSION

In the light of the foregoing sections, we are of the opinion that in case of any consolidation or changes in common school districts, it is the duty of the county superintendent or district clerk, respectively, to make the changes on the plats and that under Section 9315, supra, if the district is a common school district, it is the duty of the district clerk to file the plat with the county clerk; and under Section 9353, supra, if the district is a consolidated district, it is the duty of the county superintendent to file the plat with the county clerk.

In view of the authorities heretofore cited, it is fundamental that real property is taxable in the school district where located and that personal property is taxable in the school district wherein the owner maintains his legal domicile. We are therefore of the opinion that Sec. 9261, supra, referring to the duties of the county assessor, applies only to personal property. Any other construction of the statute would be meaningless for the reason that it makes no difference where the taxpayer resides with reference to the taxation of real property, said property as heretofore stated being taxable where located. Therefore, in order to give Sec. 9261 any meaning whatsoever, it must be construed to apply to personal property only.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

---

ROY MCKITTRICK,  
Attorney General