

TAXATION: County Courts are without jurisdiction to change
COLLECTOR: or abate a personal tax after the same has been
COUNTY COURT: assessed, levied and extended.

December 11, 1942

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Hon. George S. Montgomery
Presiding Judge, County Court
Jackson County
Kansas City, Missouri

12-15
FILED

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Dear Sir:

This is in reply to yours of recent date, wherein you submit a question, the substance of which is:

"Does the County Court have authority to change the number of a school district in which a taxpayer is listed on his tax bill."

From the facts which you have submitted it seems that guardian of a minor whose estate is under the jurisdiction of the Probate Court of Jackson County, Missouri, has been assessed in that county. The facts also show that the minor resides in Clayton, Missouri.

Section 10957, R. S. Mo. 1939, in so far as it pertains to the taxes of minors under guardianship, is as follows:

"* * * The personalty of an estate of a deceased person shall be taxable by and for the school district in such county in which the decedent resided at the date of his death; and the personalty of an estate in charge of a guardian or other person aforesaid shall be taxable by and for the school district in such county, in which the ward or

owner resides, on the first day of June of the year in which the assessment is made, if such ward or owner resides in such county, and if not, then by and for the district in such county in which the property was located at the date of the appointment of such guardian or other person."

Under this section it seems to be conceded that the school taxes in question should not be assessed and collected in Jackson County. These taxes, however, have been assessed in Jackson County and the County Court is now attempting to abate the school taxes and require the collector to collect from the guardian the State and County taxes only.

At the outset, we are faced with the rule that county courts have no common law or equitable jurisdiction and their powers are defined and limited by statute. State ex rel. Chadwick Consolidated School District v. Jackson, 84 S. W. (2d) 988, 229 Mo. App. 842. With this rule in mind, we look to the statutes to ascertain the powers and duties of the county court with reference to the taxes here under consideration.

When an assessment is made by the assessor it is the duty of that officer to list the school district in which the taxpayer resides.

Section 10395, R. S. Mo. 1939, provides in part as follows:

"* * * and 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 State ex rel. Davis v. Walden, et al., 60 S. W. (2d) 24, the court had before it the question of the authority of the board of equalization to change the

assessment list of a taxpayer to a district other than the school district where the assessor had placed the taxpayer when making the assessment. The court, after discussing the powers and duties of the assessor and the county board of equalization, said at l. c. 27:

"* * * It seems clear that the board cannot acquire jurisdiction to make the assessment as of omitted property by striking from the assessor's books property appearing thereon and at the same time and by the same order restoring to the book the self-same property, the only purpose and effect of the order being to change the situs of the property for taxation purposes from one school district of the county to another."

The court, in the Davis case, supra, also referred to State ex rel. Hamilton v. Brown, 172 Mo. 374, and said, at l. c. 27:

"* * * That was an action by mandamus against the county collector to compel him to accept school taxes in a less amount and for a different school district than as shown on the school tax books certified to him by the county clerk. It was held that he was not responsible for the tax books, but was responsible for the taxes as they appeared upon such tax books. * * * * *"

By this statement, taken from the Hamilton case, the court held that the tax collector was responsible for the taxes as they appeared on the tax books which were certified to him.

The court, in the Davis v. Walden case, supra, also held that the board of equalization did not have authority and jurisdiction to change the assessment list by transferring a taxpayer from the school district shown in the assessment list to some other district.

In speaking of the duties of the assessor relating to assessments, the court, at l. c. 26, said:

"The county assessor is the officer upon whom the statute places the duty of assessing for taxation property such as that here involved. Section 12766, R. S. 1919, amended Laws 1923, p. 375, section 9756, R. S. 1929 (Mo. St. Ann. Sec. 9756). By statute it is made his duty in listing property to take the number of the school district in which the taxpayer resides at the time of making his list, to be by him marked on the list and on his personal assessment book. We find no statute devolving this duty upon any other local officer or board. This the assessor did in the instant case. He listed relator as a resident of district No. 33 and so marked him upon the assessment list and the personal assessment book. The assessment book showed a regular and valid assessment. In performing such duties the assessor may be said to have acted in a judicial or quasi judicial capacity."

Under Section 11118, R. S. Mo. 1939, county courts, under certain circumstances, are authorized to correct certain errors which may appear in connection with the assessment and levy of taxes on real estate.

Under Section 11114, R. S. Mo. 1939, county courts are authorized to make certain corrections on delinquent land lists.

We find no statute which authorizes the county court to abate personal taxes or any part thereof after the same have been assessed, levied and extended on the tax books.

In State ex rel. v. Dungan, 265 Mo. 353, 370, the court held that a county clerk was without authority to

change an assessment list and any change so made was a nullity.

In speaking of an assessment of a minor in the wrong district, the court in the Brown case, supra, 172 Mo. 374, l. c. 381, said:

"* * * If the county clerk had no right or authority to assign the curator to district No. 4, and assess a tax against him according to the rate fixed by said district, then such taxation is simply illegal and void, and his property is not subject to levy to pay the same, and if seized and sold by the officer may be recovered by the plaintiff in an action of replevin against the purchaser. (Railroad v. Lowder, 138 Mo. 538.) If he is sued for the tax, he may set up the illegality and defeat the action.
* * * * *"

One of the most recent cases on this question is School District No. 46, et al. v. Stewartville School District, et al., 110 S. W. (2d) 399. In this case the real estate of a taxpayer had been assessed in the wrong district. The purpose of the suit was to compel the county court to place the lands assessed in the proper school district. The court, in this opinion, in referring to the powers and duties of county courts with reference to erroneous assessments, said, l. c. 402:

"Article 6, Sec. 1, of the Constitution of Missouri, confers judicial power upon the county court. Section 36 of article 6 of the Constitution limits and defines the jurisdiction of county courts 'to transact all county and such other business as may be prescribed by law.'

"As to erroneous assessments of taxes, section 9808, R. S. 1929 (Mo. St. Ann. Sec. 9808, p. 7908), provides that county courts shall determine allegations of erroneous assessments or mistakes of defects in descriptions when petitioned by one, who shall show good cause for not having attended meeting of board of equalization.

"The above section has no bearing upon the controversy herein involved.

"Section 9980, R. S. 1929 (Mo. St. Ann. Sec. 9980, p. 8019), provides as follows: 'The several county courts are hereby authorized and empowered to hear and determine all allegations of erroneous assessments of lands for taxes, and in all cases where it shall appear that lands have been erroneously taxed, either by having them taxed to more persons than one, or more than once for the same year to the same person, or if the land was not subject to taxation, the said court shall order the same to be corrected on the books of the proper assessor, and shall cause the clerk to make the corrections on the books in his office.'

"Section 9946, R. S. 1929, as amended by Laws of 1933, p. 424 (Mo. St. Ann. Sec. 9946, p. 7989), provides: 'In all cases where any assessor or assessors, the county court, or assessment board, or any city council or assessment board, shall have assessed and levied taxes, general or special, on any real estate, according to law, whether the same be delinquent or otherwise, and until the same are paid and collected, with all costs, interests and penalties thereon, the city council of any city and the county court of any county shall have the full power to correct any errors which may appear in connection therewith,

whether of valuation, subject to the provisions of the Constitution of this State, or of description, or ownership, double assessment, omission from the assessment list or books, or otherwise, and to make such valuations, assessment and levy conform in all respects to the facts and requirements of the law. Any description or designation of property for assessment purposes by which it may be identified or located shall be a sufficient and valid description or designation.'

"The provisions of the above two sections are invoked by the appellants herein."

The court, in discussing the Brown case, supra, held that an assessment of a taxpayer in the wrong district is not an erroneous assessment, but, in fact, an erroneous taxation. And, at l. c. 403, the court said:

"Under the authority of State ex rel. v. Brown, supra, we hold that the complaint filed by appellants in the county court of De Kalb County, Mo., presents an issue of erroneous taxation and not an issue of erroneous assessment, and that the county court of said county did not have jurisdiction to determine the issues as presented in appellant's complaint filed in said court in this cause. There is no constitutional or statutory authority giving jurisdiction to county courts in matters of erroneous taxation."

Since the error referred to in your inquiry is one of erroneous taxation, and since the county court has no jurisdiction to determine issues of erroneous taxation, then it would be without authority to make an order abating an assessment or any part of an assessment in which a taxpayer had been assessed in the wrong district.

CONCLUSION

From the foregoing it is the opinion of this department that the county court is not authorized to change or abate a personal tax which has been erroneously assessed in the wrong taxing district.

Respectfully submitted,

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TWB:CP

APPROVED:

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