ASSESSORS: It is the duty of the County Assessor to compile a land list or real estate book for assessment purposes, and the County cannot necessarily be required to pay the Assessor therefor.

Supplemental opinion to #59 - 8-24-37

February 4, 1938

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Mr. Martin L. Neaf,
Assessor, St. Louis County,
Clayton, Missouri.

Dear Sir:

In compliance with your request that this department reconsider its opinion rendered on August 24, 1937, to Mr. John H. McNatt, Prosecuting Attorney of St. Louis County, the following is the conclusion that has been reached based upon and confined to the questions asked in Mr. McNatt's letter of inquiry, together with the records of the county court submitted therewith:

I.

Mr. McNatt's letter is as follows:

> "We should like to know whether under R. S. Mo. 1929, sec. 9787, our County Assessor can be required to compile and keep a land list for a full and accurate assessment of all property in this county without being paid therefor out of the County treasury. The County Court has ordered Assessor Neaf to do this work, expecting him to pay for it out of his fees rather than, as the statute requires, out of the County treasury. We should also like to know whether the County Court's order requiring Assessor Neaf to do this work is mandatory.
>
> "Thanking you very much for your courtesy in this matter, I remain."

II.

The pertinent records of the county court show as follows:

(a) The matter of the Assessor of St. Louis County making a land list or real estate book first came before the court on May 9, 1881, whereby it was ordered that the assessor should make up his land list book in alphabetical order.

(b) The next pertinent record is that of March 9, 1906, whereby a method or system of tax assessment to be used by the assessor of the county was approved and adopted, which method included as a part thereof the making of the land list book.

(c) The above order of 1906 pertaining to the method of tax assessment, including a land list book, was readopted by the court from time to time up to and including the last and final order made at the May Term, 1937, of the court; and in this last order the court finds that the fees of the assessor are adequate to pay sufficient personnel to carry out such method without the county paying for such personnel, and the assessor is ordered to proceed to make such assessment of the county under the method adopted.

III.

The present general laws or statutes pertaining to assessments and assessors' duties, among which are Sections 9780 and 9782, have been in force a long number of years, and the county assessor has always been required by such laws or statutes to make a land list or real estate book.

In 1883 the Legislature enacted what is now Section 9787, R. S. Mo. 1929, it being the section alluded to in Mr. McNatt's letter of inquiry, and this section provides, in substance, among other things, that all counties in the state which had at the time of the enactment of this statute in 1883, a system of plats and abstracts to facilitate the assessment of property, then in such case the provision

respecting the making of the land list is superseded. However, in the instant case the county court records do not show, either at the time of the enactment of the statute now in force or since, whether or not St. Louis County had and used plats and abstracts as a method for assessment of the county property.

Another provision of Section 9787, now discussed, is that any county having a population exceeding forty thousand in number (St. Louis County being one of such counties) may by court order adopt any method of assessment it deems fit. Hence, by reason thereof, the county court could eliminate the land list, if one was being used, and substitute some other means or record in its place. However, the county court in this instance has not seen fit to eliminate the land list book, but, on the contrary, has retained it in its method and system of tax assessment ever since 1881, or before, up to the present time, as shown by its last order and record aforesaid. Hence, it would appear that, either under the provisions of the general statutes aforesaid, Sections 9780-9782, or by reason of the county court's last and present order, apparently acting under Section 9787, it is the duty of the assessor to make up and use a land list book as part of, and to facilitate, his assessment of the property in the county.

IV.

Relative to the question of whether the assessor can require the county court to pay him additional, or any, compensation, or to pay necessary personnel which the assessor might employ for the work of making up this land list, it can be answered as follows:

Sections 9780 and 9806 provide the compensation of assessors in counties having a population such as St. Louis County has, to-wit, 25¢ for each assessment list and 3¢ additional for each entry in the land list or real estate book. Hence, unless the provisions of Section 9787 (alluded to in the letter of inquiry) change the fee or compensation basis under the facts in this case, the aforesaid Sections 9780 and 9806 prevail.

V.

A question has been presented in this matter as to whether or not the concluding words or clause, namely, "and may provide the means for paying therefor out of the county treasury," found in Section 9787, which words or clause relate to the adoption by the court of some particular method of assessment and the work necessary to carry it out, can be construed as to make it mandatory, in place of discretionary, on the court to pay the assessor in this case for compiling and using the land list in question as a part of the county's assessment method, having ordered him to do so. In dealing with this question it is first necessary to consider a further portion of Section 9787, to-wit:

> "Provided, that in counties having a population of over forty thousand the county court may in addition to the foregoing provisions for securing a full and accurate assessment of all property therein liable to taxation, or in lieu thereof, by order entered of record, adopt for the whole or any designated part of such county any other suitable and efficient means or method to the same end, whether by procuring maps, plats, or abstracts of titles of the lands in such county or designated part thereof or otherwise."

In view of the foregoing language of this part of the section just quoted, it must be shown or else assumed, in order to make said section applicable, that the county court by its last and recent order aforesaid adopted a method of assessment "in addition to the foregoing provisions for securing a full and accurate assessment," or, one that was "in lieu" of such foregoing provisions. Did the county court by said last order, in adopting the method it did, do either one or the other? We believe not because:

(a) The existing method of assessment in St. Louis County whereby a land list or real estate book and personal property book are used is not a method in addition to the foregoing provisions of Section 9787, inasmuch as there is no showing one way or the other that the county was using a plat

and abstract method at the time the statute in question was enacted. Nor is it in addition to the method prescribed in the general statutes, Sections 9780-9782.

(b) Neither is said existing method in lieu of either of the methods provided for by the "foregoing provisions" of Section 9787 or Sections 9780-9782.

In point of fact, it seems to us, gathered from the county court's records submitted, that the present existing method of assessment in St. Louis County is the same method used by the county for a considerable period of time before the enactment of Section 9787 and used ever since to the present time. Further, and in point of fact, the last order of the court expressly states that the method of assessment called for in the order is the same that has been in force for the last five years or more. Hence, we seriously doubt, under the facts as shown, that Section 9787 has any applicability in this case.

VI.

However, assuming for argument, that the county's present method of assessment is a real and substantial change from the preceding method and that it can therefore be said that the present method is in lieu of such former method, can the county, having required the assessor by its said order to proceed under such change in method, be compelled to provide the means for paying therefor out of the county treasury, under the theory of a mandatory construction of the statute, said Section 9787? The further question asserts itself here as to whether a change in method of assessment is, or would be, such as to do away with, in whole or in part, the basis on which the assessor is compensated for his work under Section 9806 as amended and Section 9780, that is to say, if the new method of assessment did away with the taking of assessment lists or compiling the land list book, or both, then the assessor would have to rely on the county court, acting under said Section 9787, to supply him compensation, in whole or in part, for what he would lose under the general statutory provisions for fees by reason of such change in method. Hence, if the assessor should be deprived of the

whole, or a very substantial part, of his fees under the general statutes, then it would apparently work an injustice for the county court, if acting under the provisions of Section 9787, not to supply compensation to the extent necessary. Our courts have frequently ruled in cases affecting the rights of public officials that a statute should be construed as mandatory even though discretionary terms are used, and also where there is an abuse of discretionary power, if manifest injustice would result if not so construed. As illustrative of this principle, our Supreme Court in the case of State ex rel. v. Public Schools, 134 Mo. 296, said, (l. c. 305):

> "While it is generally true that mandamus will not lie to control the discretion of an inferior tribunal in whom a discretion is vested in the performance or non-performance of certain duties devolved upon it by law, it is well settled that if the discretionary power is exercised with manifest injustice the courts are not precluded from commanding its due exercise. Such an abuse of discretion is controllable by mandamus."

However, we cannot say, under the facts as submitted to us in this case, that the assessor will be deprived of any of his regular fees or compensation and that the county court is working a manifest injustice by reason of its last court order. Further, even though it be assumed that the county court could be required under said section 9787 to pay the assessor compensation out of the county treasury for the work ordered, it is apparent that there is no limitation upon the <u>amount</u> the court could fix. In other words, it would be <u>entirely discretionary</u> with the court to fix an amount wholly inadequate as compensation. In this connection our Supreme Court in the case of Sanderson v. Pike County, 195 Mo. l. c. 605, said:

> "It will thus be seen that the Legislature has vested in the county court the power to fix the compensation of the treasurer for his general services and for his services in disbursing the school moneys of the county. With this discretion neither

> this court nor the circuit court has any right to interfere. The county court is a court of record, and its acts and proceedings can only be known by its record. A contract with such court cannot be established by parol evidence. (Maupin v. Franklin Co., 67 Mo. 327; Dennison v. County of St. Louis, 33 Mo. 168.) No record of the county court was produced on the trial of this cause fixing the treasurer's compensation under either of the foregoing sections of the statute. It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer, unless the statute gives it. (State ex rel. v. Adams, 172 Mo. 1-7; Jackson County v. Stone, 168 Mo. 577; State ex rel. v. Walbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. v. Wofford, 116 Mo. 220; Givens v. Daviess Co., 107 Mo. 603; Williams v. Chariton Co., 85 Mo. 645; Gammon v. Lafayette Co., 76 Mo. 675.)"

The county court in its last order finds that the fees of the office of the Assessor of St. Louis County are adequate to pay salaries of sufficient personnel to carry out the present method of assessment without payment therefor out of the county treasury.

We do not believe it to be the province of this office to dispute this finding, even though hardship by reason of the court's said order might result in this case. The Supreme Court has passed upon this principle in State ex rel. Buder v. Hackmann, 265 S. W. 1. c. 535, where the court said:

> "The argument of hardship, and that an officer should not be compelled to incur a financial loss, in performing the duties incident to his office, cannot be considered by the courts in passing upon the rights of relator, as fixed by the statute."

VII.

Summarizing, and in conclusion, we say as follows:

1. That it is the duty of the assessor under Sections 9780 and 9782 (which we believe to be the applicable law in this case) to make up or compile annually a land list or real estate book for current assessment purposes. Or, if Section 9787 could be held applicable in this case (which would be contrary to our view) so that the court could act under the authority given it to require the assessor to compile such land list as a part of the assessment method adopted, then, the court having so acted, its order would make it the duty of the assessor to proceed and compile said book.

2. That it appearing in the showing made by the county court records that there has been no material or real change in the method of tax assessment by the county, then as a consequence the provision of Section 9787 respecting the fixing of the assessor's compensation is not applicable to this case.

3. That even though the aforesaid provision of Section 9787 could be held applicable to this case, and it could be construed as mandatory upon the county court to fix compensation for the assessor, yet the amount to be fixed would rest entirely with the court, and which amount so fixed might prove to be wholly inadequate as compensation to the assessor.

4. That the last order or judgment of the county court, which was not appealed from and hence has become final, finding in substance that the fees of the office of the assessor are adequate to carry out the work of the assessment method in vogue for the last five years or more preceding this order or judgment, is binding on the assessor.

5. That in making up or compiling a land list in alphabetical order as part of the method of assessment, the assessor may by order of court be allowed not to exceed 3¢ for each and every tract assessed and entered in the land list in addition to the other fees allowed him by law and to retain same not to exceed the constitutional limit.

Respectfully submitted,

J. W. BUFFINGTON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

JWB:HR