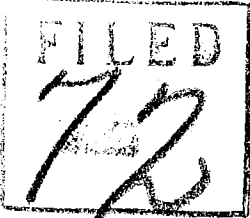


COUNTY: County's classification changes if assessed valuation requirements are met although the
STATE AUDITOR: State Auditor does not formally notify the county of such fact. The State Auditor may notify the county beyond the thirty-day period prescribed by Sec. 48.040, RSMo 1949, of changing classification.



November 22, 1954

Honorable Stephen R. Pratt
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request is as follows:

"I wish to request your official opinion on the following matter:

"Clay County is a county of the third class and has had an assessed valuation of more than \$50,000,000.00 for seven successive years. Sections 48.020, 48.030 and 48.040 V.A.M.S. of Missouri are the pertinent statutes in question. Section 48.030 provides 'that the change from one classification to another shall become effective at the beginning of the county fiscal year following the next general election after the certification for the state equalizing agency for the fifth successive year that said county possess an assessed valuation placing it in another class.' It is my understanding that said certification has been made for the state equalizing agency. However, the state auditor has failed to notify officially all county elected officers and the county officials charged with the supervision of elections of the change in status of the county.

"Does the mere failure of the state auditor to comply with the duty, as set forth in Section 48.040, V.A.M.S. of Missouri, prevent Clay County from becoming a second class county on January 9, 1955?

Honorable Stephen R. Pratt

"If such duty on the part of the state auditor is merely administrative or advisory, then can such defect be cured by a notification of the change in classification at this date?"

By Section 48.020, RSMo 1949, counties having an assessed valuation of fifty million dollars and less than three hundred million dollars are second class counties.

Section 48.030, RSMo 1949, provides:

"For the purpose of determining the initial class of the various counties, the assessed valuations of the respective counties as set forth on pages 333 to 400 of the 'Journal of the Board of Equalization of the State of Missouri for the Year Ending December 31, 1944' shall be used; provided, however, that hereafter no county shall be deemed as moving from a lower class to a higher class or from a higher class to a lower class until the assessed valuation of said county shall have been such as to place it in such other class for five successive years; provided further, that the change from one classification to another shall become effective at the beginning of the county fiscal year following the next general election after the certification by the state equalizing agency for the fifth successive year that said county possesses an assessed valuation placing it in another class; provided further, that if a general election shall be held between the date of such certification and the end of the current fiscal year, such change of classification shall not become effective until the beginning of the county fiscal year following the next succeeding general election."

Section 48.040, RSMo 1949, provides:

"It shall be the duty of the state auditor, as the supervisor of county audits, to examine annually the assessed valuation figures of the various counties immediately upon the certification of same by the state equalizing agency and to ascertain if any county shall have

Honorable Stephen R. Pratt

changed classifications as determined in this chapter. In case it shall be found that any county has met the requirements of reclassification as set forth in this chapter, it shall be the duty of the state auditor within thirty days after said certification to notify officially all county elected officers and the county officials charged with the supervision of elections of the change in status of the county."

It is apparent from these provisions that the essential matter to be determined in ascertaining whether or not a county has changed from one classification to another is whether or not the state equalizing agency, which is the State Tax Commission, has found that the county has possessed for five successive years an assessed valuation which places it in another class. Insofar as this determination is concerned, the State Auditor performs no duties whatsoever; his only function is a ministerial one; he notifies the county upon examination of the valuation figures certified by the State Tax Commission.

Under such circumstances we are of the opinion that the mere failure of the State Auditor to comply with the requirements of Section 48.040 and notify the county of its change in classification does not prevent a county which has met with the requirements of Section 48.030 from changing its classification. This, of course, rests on the assumption that the State Tax Commission has made the required finding regarding the assessed valuation of the county.

As for your second question, as pointed out above the State Auditor's duty in regard to the change of classification of a county is purely a ministerial one. No discretion whatsoever is conferred upon him regarding the matter. He merely looks at the figures which have been previously ascertained by the State Tax Commission. Under such circumstances we are of the opinion that the failure of the State Auditor to act within the thirty-day period could not prevent a county's classification being changed if it meets the requirements of the statute.

The following statement from 3 Sutherland, Statutory Construction, 3rd Edition, 1943, page 102, is quoted with approval of the Missouri Supreme Court in the case of State ex rel. School District v. Holmes, 253 S.W. (2d) 402, 1.c. 404:

"For the reason that individuals or the public should not be made to suffer for

Honorable Stephen R. Pratt

the dereliction of public officers, provisions regulating the duties of public officers and specifying the time for their performance are in that regard generally directory. A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory unless the nature of the act to be performed, or the phraseology of the statute, is such that the designation of time must be considered a limitation of the power of the officer."

In that case the Supreme Court held that the failure of a school district to submit a plan of reorganization to the State Board of Education within the time limited by statute (Sec. 165.673(2), RSMo 1949) did not invalidate the reorganization in accordance with such plan.

In the case of State ex inf. Dalton v. Dearing, 263 S.W. (2d) 381, the Supreme Court held that a delay by the Governor beyond the time fixed by Section 30(a) (b) of Article VI of the Constitution of Missouri, 1945, in the appointment of the nineteenth member of board of freeholders chosen to prepare a plan for the administration of mass transportation services in a metropolitan area, did not invalidate the appointment.

We think that the principle applied by the Supreme Court in those cases is applicable in the situation here presented. Certainly no prejudicial result could follow from the State Auditor making his certification beyond the thirty-day period prescribed by Section 48.040, supra.

CONCLUSION

Therefore, it is the opinion of this office that the failure of the State Auditor to notify a county that the State Tax Commission has found for five successive years that its assessed valuation is such as to require a change in the classification of such county in accordance with Section 48.030, RSMo 1949, does not prevent the change in classification of such county from becoming effective.

We are further of the opinion that the failure of the State Auditor to notify the county within thirty days as required by

Honorable Stephen R. Pratt

Section 48.040, RSMo 1949, can be remedied by a notification to the county subsequent to the expiration of said thirty-day period.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml