

COUNTIES: Salary, duties and liabilities of county assessor
COUNTY ASSESSOR: ousted from office under Judgment of Circuit Court in
COUNTY COURT: quo warranto proceedings and his successor appointed
QUO WARRANTO: and qualified.



April 4, 1953

Honorable Earl Saunders
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Mr. Saunders:

This will acknowledge receipt of your request for an official opinion, which request reads as follows:

"Enclosed is copy of letter dated March 16, 1953, from Wallace V. Coleman.

"In addition to the facts in said letter, reference is made to your opinion of February 4, 1953, and to the following.

"Defendant's appeal from the judgment of ouster is still pending.

"Under date of March 16, 1953, there is the following record entry of the County Court.

"Now on this day comes Martin E. Burgess, former assessor within and for Jefferson County, Missouri, and presents to the Court his account for making the assessment of said County to March 12, 1953 and recording same in the assessment books and for other services rendered.

"The Court, after examining said account finds that prior to March 12, 1953, Martin E. Burgess correctly performed the following work, to-wit:

"Date	1/2 County, 1/2 State	State	County	Total
3-11-53	To taking 8,460 Personal assessment lists at 45¢ each		1903.50	1903.50 3807.00

Honorable Earl Saunders

3-11-53	To entering 21,891 real estate property at 6¢ each	656.73	656.73	1313.46
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3-11-53	To taking 2236 Crop Reports for State Board of Agriculture at 10¢	111.80	111.80	223.60
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3-11-53	To taking 4,450 non- resident real estate lists at 45¢ each	1001.25	1001.25	2002.50
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	Totals	3673.28	3673.28	7346.56
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"Whereupon, the Court orders the account of Martin E. Burgess filed and further orders that the clerk request the prosecuting attorney for an opinion as to the right of the court to pay said account out of the County Treasury."

"According to Mr. Coleman, the assessing as shown by Mr. Burgess' statement attached to the enclosed letter and set forth above, is not a complete assessment.

"Your opinions will be appreciated on the questions in the enclosed copy of letter from Mr. Coleman and also on the following.

"(1) Must or should a determination be made of the extent and completeness and of the correctness and accuracy of Mr. Burgess' assessing? If so, who is to make such determination and how is this to be done?

"(2) Is a verification as provided by Section 137.245, R. S., 1949, necessary for a valid assessment? In your opinion should such a verification be made? If this should be done, by whom is the verification to be made and how should the affiant be qualified?

Honorable Earl Saunders

"(3) If your answer to Question No. 3 in the enclosed letter is in the affirmative, how and by what method should Mr. Kasten ascertain the accuracy of the work performed by Mr. Burgess; how much compensation is Mr. Kasten entitled to for making such ascertainment; by whom is this amount to be paid; how is the amount of such compensation to be determined and by whom?

"(4) If Mr. Burgess is entitled to compensation, how much should he receive; when should he receive it; how is the amount of his compensation determined and by whom?

"(5) Do the deputy assessors employed by Mr. Burgess have any valid claim against the county or state for pay and if so, how should the amount of their compensation be determined and by whom?"

We will answer the questions in your request in the order stated therein, and then answer the questions in Mr. Coleman's letter, a copy of which is attached to your request.

You first inquire: "Must or should a determination be made of the extent and completeness and of the correctness and accuracy of Mr. Burgess' assessing. If so, who is to make such determination and how is this to be done?"

We can see no particular reason for causing any extensive investigation as to the correctness or accuracy of Mr. Burgess' assessment to March 12, 1953, the date of expiration of his tenure in office, in the absence of the county court having some particular reason to be suspicious of the accuracy of his account and assessments. The late assessor was under bond for the faithful duties of his office. However, we are of the opinion that Mr. Burgess should be required to make an affidavit similar to the one contained in Section 137.245, RSMo 1949. Of course, the affidavit should be confined only to the authenticity of the assessments made by him to March 12, 1953, the last day he held office, and not to a complete assessment as shown by affidavit in the statute hereinabove referred to.

The county court, according to entry made as of March 16, 1953, found after examining his account that prior to March 12, 1953, the date his tenure as county assessor expired, that he had correctly performed the work shown by said account. The only questions seem to be as to when they could pay him for services rendered.

Honorable Earl Saunders

So, in view of the foregoing, we are of the opinion that unless the county court has some particular reason to question the correctness of his account and assessment, which is not reflected in the record entry of said court hereinabove referred to, that it is unnecessary to further determine the accuracy of his assessment to March 12, 1953.

We have answered your second request in our first answer. It is necessary for a valid assessment that Mr. Burgess' account be verified as hereinabove shown under Section 137.245, supra.

In answer to your third request we will say that our answer to question No. 3 in the enclosed letter of Mr. Coleman is in the negative and that Mr. Kasten, the present Assessor, needs certify to only that part of the assessment made by him after assuming office.

Your next inquiry No. 4 is that if Mr. Burgess is entitled to compensation, how much should he receive, when should he receive it, how is the amount of his compensation determined and by whom? It is our opinion that Mr. Burgess is entitled to compensation for services rendered as provided by statute which clearly states the amount the assessor should receive for particular work performed as shown in his account on page one of your request. (See Sections 53.130 and 53.160, RSMo 1949.)

Under the law such county assessor would ordinarily be entitled to receive such compensation when he has properly complied with the law by making the foregoing affidavit and after June 1, 1953, the date when the assessment must have been completed as provided in Section 137.115, page 853, Laws of Missouri 1951, and a copy of the assessment book is returned to the county court as provided in Section 137.245, RSMo 1949. However, in view of the fact that Mr. Burgess' services as assessor has been discontinued by judgment of the Circuit Court in quo warranto proceedings and appointment and qualification of a successor, we believe that he is entitled to receive whatever compensation is due him for services rendered whenever he furnishes the proper affidavit as provided hereinabove and in Section 137.245, supra.

In your last question No. 5 you inquire if deputy assessors employed by Mr. Burgess have any valid claim against the county or state for pay and, if so, how should the amount of their compensation be determined?

Honorable Earl Saunders

Under Section 10946, RSMo 1939, county assessors of third class counties were authorized to appoint as many deputies as they may find necessary, to be paid for out of funds allowed such assessors. However, while there is still some statutory authority for hiring and paying deputies to assessors in other class counties, we find no such statute for counties of the third class. The foregoing statute, 10946, supra, was repealed by the Sixty-fifth General Assembly and Section 5 was enacted in lieu thereof, Section 5, page 1782, Laws of Missouri 1945, now known as Section 53.060, VAMS, provides the assessor may appoint as many deputies as he may need, to be paid as provided by law. However, no statute was enacted for the payment of compensation for deputies. Section 53.095, RSMo 1949, Cumulative Supplement 1951, provides that county assessors in third class counties may appoint and fix compensation of such clerical and stenographic assistance as may be necessary for efficient performance of the duties of his office. That compensation will be paid from the county treasury and should not exceed \$600 per annum.

Therefore, in the absence of any special statute authorizing county assessors of third class counties to provide for compensation for their services, we are forced to conclude that no deputies can have any valid claim against the county or state for compensation.

We shall now answer the four questions in the attached letter from Mr. Coleman addressed to you under date of March 16, 1953, as requested in your letter.

His first inquiry deals with the authority of the county court to pay Mr. Burgess for the work he has completed to March 12, 1953, as per the statement attached, which statement is attached to your request.

Under date of February 4, 1953, this department rendered you an opinion in which it was held, that the county assessor was entitled to the compensation of the office for official duties until his successor was appointed and qualified.

The second inquiry is whether the county court is vested with the authority to pay Mr. Burgess compensation before the tax books, both real and personal, are turned over to the county court according to Section 137.245, RSMo 1949.

In view of the fact that this question was fully discussed in our opinion hereinabove, we deem it unnecessary to give it any further consideration.

Honorable Earl Saunders

The third question in Mr. Coleman's letter deals with the right of Mr. Burgess' successor to receive compensation for ascertaining the accuracy of the work performed by Mr. Burgess in order that the said successor may properly certify the tax books to the county court under Section 137.245, RSMo 1949.

In view of the fact there is no statutory authority requiring his successor in office to determine the accuracy of his predecessor's assessments, neither is there any statute allowing compensation for such services rendered by the present incumbent, under the well established rule of statutory construction in *Nodaway County v. Kidder*, 129 S.W. (2d) 857, 344 Mo. 795, holding that a public official claiming compensation for official duties performed must point to statutory authority for such payment, we must hold that the present county assessor is not entitled to receive such compensation.

In reply to the fourth question in Mr. Coleman's letter, we have no knowledge of any other course of action necessary in order for the county court to pay the compensation of Mr. Burgess as per the account submitted by him to the county court and spread on the record of the said court, other than obtaining an affidavit as to the authenticity of said account as held in the foregoing opinion, in the absence of some particular grounds for questioning such authenticity.

CONCLUSION.

It is the opinion of this department: (1) that there is no need to make a determination of the completeness or accuracy and correctness of Mr. Burgess' account in the absence of some substantial ground for questioning the authenticity of the account and assessment of the former county assessor to March 12, 1953; (2) that it is necessary for a valid assessment that Mr. Burgess' account be verified as hereinabove shown; (3) that, in our opinion, our answer to the third question in Mr. Coleman's request is in the negative, and that the present county assessor, Mr. Kasten, need certify only to that part of the assessment made by him after assuming the office of county assessor; (4) that Mr. Burgess is entitled to compensation for services rendered as provided by statute which clearly states the amount the assessor shall receive for particular work performed as shown in his account on page one of his request, when he furnishes the foregoing affidavit; (5) that no deputy appointed by said county assessor has any claim against the county or state for compensation for services rendered as a deputy for the reason there is no statute providing compensation for such deputies.

Honorable Earl Saunders

It is further the opinion of this department, answering Mr. Coleman's letter attached to your request, that Mr. Burgess is entitled to compensation for work performed as of March 12, 1953, upon filing the proper affidavit hereinabove prescribed.

We deem it unnecessary to answer the second inquiry as it has been hereinabove answered.

As to his third inquiry it is the opinion of this department that there is no statutory duty upon the present county assessor to determine the accuracy of his predecessor's assessments made to March 12, 1953, the last date that he assumed the duties of his office, and that it naturally follows that there is no compensation provided for such services.

It is our opinion as to the last inquiry in said letter that there is no other course of action necessary for the county court to take in order for said court to pay Mr. Burgess compensation for services rendered as of March 12, 1953 other than to obtain his affidavit mentioned hereinabove.

This conclusion is based upon the statement in the request that the account of said assessor has been fully audited and found to be correct by the county court.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

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