TAXATION: The state is not required to pay any part of the expenses incurred under two contracts entered into by and between St. Louis County, Missouri and two appraisal companies to furnish to the county an appraisal of certain designated taxable lands and improvements thereon in said county, together with certain manuals of procedure, field record cards, land value maps, indexing cards, etc.

November 18, 1957

Honorable William Scott
Supervisor, County Department
Department of Revenue
Jefferson City, Missouri

Dear Mr. Scott:

Reference is made to the request of your department for an official opinion, which request reads as follows:

> "In view of a recent decision of the Supreme Court in the case of Milton A. Hellman, Appellant vs. St. Louis County, et al, Respondents, case No. 45842, wherein the court ruled that contracts entered into between St. Louis County and Doane Agricultural Service's, Inc. and Roy Wenzlick and Company, in connection with the re-appraisal program for St. Louis County, were valid, this department respectfully requests an official opinion from your office as to the payment of $250,000.00, the approximate total expenditure called for in these contracts.
>
> "As this is expended against the appropriation made to the assessor of St. Louis County for re-appraisal, is the State liable for any part of this $250,000.00 and, if so, to what extent is the State liable?"

The facts developed in the case of Hellman v. St. Louis County, 302 SW2d 911, to which you refer, appear as follows.

St. Louis County is a county of the first class, operating under home rule charter. The county council, by a resolution, authorized the assessor and the county supervisor to enter into

contract with two appraisal companies to undertake a parcel-by-parcel revaluation of designated real estate in said county. One appraisal company agreed to appraise all the taxable lands and improvements located within five designated school districts and the other company agreed to appraise all the taxable lands and improvements within nine other designated school districts in the county. Each contract also required the appraisal company therein named to prepare and deliver to the assessor certain manuals of procedure, field record cards, land value maps, indexing cards, identifying classification and other detailed information and services, and that the work be completed by March 1, 1957.

Each contract granted the county two options to employ the appraisal company therein named for the appraisal of other property in each of the years of 1957 and 1958.

In the Hellman case, resident taxpayers of St. Louis County sued to enjoin the enforcement of said contracts. The trial court found the issues in favor of the defendant and on appeal the Supreme Court of Missouri held that the county had the authority to enter into the above referred two contracts and that the same were not illegal.

You inquire whether the state is liable for the payment of any part of the amounts payable to the appraisal companies under said contracts.

Section 137.330, RSMo 1949, reads as follows:

> "One-half of all the costs and expenses of the assessor in making the assessment and in the preparation of abstracts of assessment lists and tax bills shall be paid by the state. When the aggregate of such costs and expenses for each year shall have been ascertained, the county clerk or if there be a county comptroller or auditor, then the county comptroller or auditor of such county shall certify to the director of revenue the amount of said costs, one-half of which shall be paid by the state out of funds appropriated for that purpose."

Under this provision, the state is obligated to pay one-half of all the costs and expenses of the assessor in making the assessment and in the preparation of abstracts of assessment lists and tax bills.

First, what is meant by the term "assessment"? Said term is defined in Cooley, Taxation, 4th Ed., Vol. III, Section 1044, page 2114 as follows:

> "* * * An assessment, strictly speaking, is an official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district. * * *"

The further definition is given at page 2115:

> "* * * As the word is more commonly employed, an assessment consists in the two processes of listing the persons, property, etc., to be taxed, and of estimating the sums which are to be the guide in an apportionment of the tax between them. * * *"

The above quoted definition of the term "assessment" was quoted with approval by the Supreme Court of Missouri in the case of State ex rel. Allen v. Kansas City, St.J. & C.B.R.Co., 116 Mo. 15, 23, 22 S.W. 611, and by the Kansas City Court of Appeals in the case of Commerce Trust Co. v. Syndicate Lot Co., 208 Mo.App. 261, 232 SW 1055. See also the case of Seested v. Dickey, 318 Mo. 192, 300 SW 1088, wherein the court held that to assess property is to place a value upon it.

Chapter 137, RSMo 1949, sets forth a comprehensive scheme for the listing and valuation of property subject to taxation. Section 137.115 provides that after receiving the necessary forms, the "assessor or his deputy or deputies shall, * * *, between the first day of January and the first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town or district, and assess the same at its true value in money * * *." Section 137.120, RSMo 1949, provides that such "lists" shall contain "A list of all the real estate and its value." A complete reading of Chapter 137, RSMo 1949, clearly indicates the duty of the assessor or his duly constituted deputies to compile a list of all taxable property within the county and to place a value thereon for tax purposes. The "valuation" referred to, is the valuations of the official whose duty it is to make them. Wymore v. Markway, 89 SW2d 9; State ex rel Thompson v. Bethards, 320 Mo. 1164, 9 SW2d 603.

In the Hellman case, supra, it was, in effect, contended that the contracts in question were invalid because they were

attempting to delegate to the appraisal companies the powers (duties and powers to valuate property) enjoined by law upon the assessor. In passing upon this contention, the Supreme Court stated at page 915:

> "* * * The assumption that the contracts constitute a delegation of any of the powers of the assessor is contrary to every fact and circumstance in evidence. Neither the ordinance (No. 713) nor the contracts purport to authorize or imply that any of the duties placed both by the statutes and the charter upon the assessor are to be assumed or exercised by the appraisal companies. The testimony of Mr. Rumping, introduced by plaintiff, was to the effect the assessor would make such use of the appraisals along with any other factors he deemed essential 'to determine the valuation in his own judgment'. So it is, that the whole of the evidence is to the effect that the contracts were made simply for the salutary purpose of aiding the assessor in determining the true value of, and thereby more accurately to assess, the taxable property of the county in accordance with his statutory duties. They are not invalid on that score."

Thus, it is seen that the contracts in question in no way relieve the assessor of his duty in connection with the making of the assessment or imposed this duty upon persons other than the assessor.

Bearing in mind the definition of the term "assessment" as above quoted, we are of the opinion that Section 137.330, RSMo 1949, does not require the state to pay one-half of the expenses incurred under the contracts in question. First, these expenses are not the expenses of the assessor or the duly appointed deputies and, second, the information and material furnished the county under these contracts does not constitute the "assessment" which can only be made by the assessor or his duly qualified deputies.

Further light may be shed upon the intention of the legislature in enacting Section 137.330, RSMo 1949, by reference to

the method of paying assessors in counties of the second, third and fourth classes. Section 53.110, RSMo 1949, relates to the fees of the assessor in class two counties. Section 53.130, RSMo 1949, relates to the compensation of the assessor in class three counties and Section 53.140, RSMo 1949, relates to the compensation of the assessor in class four counties. In each of these statutory provisions, the assessors are allowed a specified fee per "list" and a specified fee per "entry" for making up the real estate assessment book, one-half of which shall be paid out of the county treasury and the other one-half to be paid out of the state treasury.

A construction such as we have placed upon Section 137.330, supra, would place St. Louis County upon the same basis as other counties throughout the state.

It would seem to be clear that the contracts entered into in St. Louis County do not relate in any manner to the preparation of abstracts of the assessment lists or the preparation of tax bills and, therefore, the state's obligation to pay one-half of the cost and expense of the assessor in preparing said abstracts and tax bills, as set out in Section 137.330, need not be considered in connection with the question at hand.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that the state is not required to pay any part of the expenses incurred under two contracts entered into by and between St. Louis County, Missouri and two appraisal companies to furnish to the county an appraisal of certain designated taxable lands and improvements thereon in said county, together with certain manuals of procedure, field record cards, land value maps, indexing cards, etc.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

DDG:hw