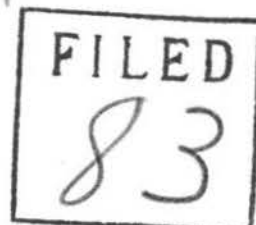


TAXATION:
ASSESSORS:
COMPENSATION:

Compensation allowed assessors.
Maximum amount of fees which he may retain.

October 20, 1942

10-26



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: W. A. Holloway, Chief Clerk

Dear Mr. Smith:

This is in response to your request on the question of what fees and expenses the assessor may charge and claim in counties containing a population in excess of forty thousand population. The particular assessor to which you refer is the Assessor of Jasper County, Missouri. This county, according to the last decennial census, has a population of 78,705.

From the letter to you from Mr. Tout, your county auditor, who with the Assessor of Jasper County is seeking the above information, we find that the following questions are at issue.

1. What is the maximum amount of salary or fees which an assessor may retain?
2. In arriving at the net salary of the Assessor, is he permitted to deduct his automobile expense?
3. Is the assessor authorized to make a charge for "compiling land blotters" and for correcting land blotters?

In speaking of the charges which the assessor may make, the Supreme Court in *State ex rel. Buder v. Hackman*, 265 S. W. 532, 1. c. 534, said:

"Before the state can be held liable for the payment of a fee or expense incurred in its behalf, the person or officer

claiming such fee or expense must be able to point out the law authorizing such payment. (Citing cases)"

See also Nodaway County v. Kidder, 129 S. W. (2d) 857.

And again in the case of State ex rel Buder v. Hackman, supra, at l. c. 535, 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. Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty. * * * * *"

And, the court, in speaking of necessary expenses allowed the assessor, in the Buder case said, l. c. 534:

"* * * The 'actual necessary expenses' provided for do not include salaries of any character. The clear meaning of sections 13116 and 13124 is that the assessor, in addition to the fees allowed by law, shall be entitled to have furnished to him, without deduction from such fees, all his necessary printing, stationery, postage, and office equipment, and that he shall be reimbursed for all outlays made by himself and his deputies by way of expenses in doing the work, for the doing of which work he and they are fully paid out of the fees allowed by law."

Sections 10996 and 11364, R. S. Missouri 1939, fix the compensation of assessors for their services. Section 10996 provides as follows:

"The compensation of each assessor shall be thirty-five cents per list in counties having a population not exceeding forty thousand, thirty cents per list in counties

having a population of more than forty thousand, and not exceeding seventy thousand, and twenty-five cents per list in counties having a population in excess of seventy thousand inhabitants, and shall be allowed a fee of three cents per entry for making real estate and personal assessment books, all the real estate and personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other half out of the state treasury: Provided, that nothing contained in this section shall be so construed as to allow any pay per name for the name set opposite each tract of land assessed in the numerical list: Provided further, that in the city of St. Louis the assessor shall perform the duties now performed by the county clerk in extending taxes on the assessment books and such other services pertaining thereto as may be required by law, and shall be allowed the same compensation as is allowed by law to county clerks for such services; and provided also that in all counties of this state having more than one hundred and fifty thousand inhabitants except in such counties as the assessor may now or hereafter be paid an annual salary in lieu of such fees, the compensation of the assessor shall be twenty-five cents per list together with such other fees as may be authorized by law."

Section 11364, R. S. Missouri 1939, provides in part as follows:

"Assessors and collectors shall be compensated in like manner and in like amounts as for the assessments of other taxes: * *"

In *State v. Gomer, et al*, 101 S. W. (2d) 57, 66, the court in speaking of the duties and compensation of the assessor said:

"That as compensation for making the numerical assessment in the land list, an assessor should be paid such amount as may be allowed by the county court not to exceed the sum of 3 cents for each and every tract so assessed; but that all contiguous tracts in the same section and all contiguous lots in the same square or block which can be consolidated into one tract, lot, or call shall be counted as one tract.

"That as for compensation for taking the lists required to be delivered to him by owners of personal property (in counties of not more than 40,000 population) an assessor should be paid 35 cents for each list taken and should also be paid a fee of 3 cents per entry for each entry, of a property owner's name and the personal property assessed to him, in the alphabetical list in the part of his book covering personal property.

"That an assessor is entitled to thirty-five cents per list for each list he takes which contains personal property, whether he takes it from the owner or makes it on his own view or other information obtained as specified under Section 9760 or section 9763, R. S. 1929 (Mo. St. Ann. Secs. 9760, 9763, pp. 7877, 7879), but he is not required to make or entitled to receive any compensation for making a list containing only real estate."

In our review of the statutes, we fail to find where it is provided that the assessor shall be allowed "expenses for his automobile," "compiling land blotters," "correcting land blotters" or for preparing a "motor vehicle registration list."

Even though it is necessary for the assessor to perform the aforesaid acts in making assessments, since no provision for compensating him for this is made by the statutes, then, following the ruling in the Buder case, supra, he cannot be allowed compensation therefor.

Further, referring to the question of the maximum amount of compensation an officer may retain, we find that Section 13450, R. S. Missouri 1939, provides as follows:

"The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. The foregoing clause shall not apply to any county or city not within a county in this state now containing or which may hereafter contain one hundred thousand inhabitants or more. After the first day of January, 1891, every such officer shall make return quarterly to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit; and for any statement or omission in such return contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

In speaking of the application of the provisions of this section to various county officers, the Court, in State ex rel. Saline County v. Price, 246 S. W. 572, 573 said:

"The first question confronting us in the record arises upon the contention of the respondent that section 11036, R. S. 1919, is unconstitutional because it reduces the maximum compensation allowed to public officers, including the sheriffs of the several counties, to be paid out of the fees of the office, to \$5,000 per annum, while section 13, art. 9, of the Constitution fixes the maximum amount at \$10,000.

"The constitutional provision referred to is as follows:

"The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistant, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

"It will be seen that this provision applies to all executive and ministerial officers of the counties and municipalities of the state, and there is nothing in the words in which it is expressed that either fixes the amount of their total compensation or the amount which they may retain from the fees of their respective offices for such compensation. It is simply a limitation on the maximum amount of compensation which may be allowed them by the Legislature, without interfering with its right to confine the compensation of any one or all of them to what it may consider the actual value of the service rendered in the office. The theory of the provision seems to be that all fees are imposed by the state through its laws, and that when collected by its officers they become the property of the state to be disposed of at its pleasure. This duty of collection may be and is performed by salaried officers as well as by those depending upon the fees for their compensation, and in many instances they bear no relation to the service involved in connection with the matter in which they pertain. The prominent and only idea expressed in this constitutional provision is the protection of the state from unreasonable charges by ministerial and executive officers affected, and provided for their compensation out of a fund created in the

performance of their duties. The only limitation upon the legislative branch of the government, either expressed or implied, is, as we have said, a limitation of the maximum amount of the compensation to be so paid. The provisions of sections 11036 and 11037, R. S. 1919, have no tendency to interfere with that purpose. This point must be ruled against the respondent."

In this case the court held that the sheriff was only entitled to retain \$5,000 per annum of fees earned.

On the question of what are "fees" the court, in the Price case, supra, said at l. c. 575:

"This court, in Callaway County v. Henderson, 119 Mo. 32, 24 S. W. 437, adopted a definition of the word 'fees' as used in a similar case to the one now before us as follows:

"'Fees are a reward or wages given to one as a recompense for his labor and trouble for the execution of his office or profession, as those of an attorney or physician.'

"The case then in judgment involved the question whether the compensation allowed by law and actually received by the county clerk for the labor and services of keeping the accounts of his office with the county treasurer were such as he should account for in determining the amount which he might retain as his compensation, and this court held that it must be so accounted for, adopting the rule that it included all compensation received for work done by him and his deputies in the performance of a duty imposed by law. * * * *"

October 29, 1942

Following these principles, the officer is limited to \$5,000 as the maximum salary or fees, and his fees are all amounts received for work done by him or his deputies in the performance of a duty imposed by law.

CONCLUSION

From the foregoing, it is the opinion of this department that the maximum amount of salary or fees which the assessor may retain is \$5,000 per annum. We are further of the opinion that such officer is not authorized to deduct from his gross fees earned the expense of his automobile in arriving at his net salary.

Further, we are of the opinion that the statutes do not authorize the assessor to charge a fee for "compiling land blotters," "correcting land blotters" or for making a "motor vehicle registration" for a county. Such services are incidental to his duties in preparing assessment lists for which he receives compensation under the statutes above quoted.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

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APPROVED:

ROY McKITTRICK
Attorney General