

STATE TAX COMMISSION: Four questions in regard to whether or not State Tax Commission is compelled to grant hearings on complaints.

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May 3, 1935.

State Tax Commission of Missouri
Jefferson City
Missouri



Gentlemen:

This is to acknowledge receipt of your letter requesting an opinion from this office which reads as follows:

"Section 9855, R. S. Statute, 1929, provides among other things that - 'After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof, and in case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered.'

"And further on in this same Section the statute says - 'In case said commission or any member or agent thereof

who is acting in said review, shall determine that the assessments so reviewed are not made according to law, he or they shall, in the column provided for that purpose, place opposite said property the lawful valuation of the same for assessment.'

"Under this Section a great many complaints have been filed in the past year or two with the State Tax Commission for reassessment of individuals property. These complaints some times are filed by the owners of property who fail to agree, and in other cases by individual taxpayers of the community.

"There are several legal questions in connection with this procedure on which we would like the advice of your department.

"First - Is the Commission compelled to grant a hearing for reassessment by any citizen who sees proper to file such a complaint?

"Second - Is the Commission required to grant a hearing on reassessment of property if the County Court, the Assessor or any member of the County Board of Equalization files a complaint asking a re-hearing after the Board has passed on the assessment of such property?

"Third - If a complaint is filed and a request for hearing made of the Tax Commission, can the commission require the complainant to give bond and pay the cost of such proceeding, or any part thereof.

"Fourth - Does the person filing complaint have to be a taxpayer in the district in which the complained of property is located, and will such complainant have to make a proof of damage from the assessment complained of?

"We are asking these questions because in the past the Commission has been put to considerable expense in conducting hearings under this section that were unjustified and resulted in no change in the assessment.

"The commission would like an answer and a ruling on these questions as soon as convenient."

Your request for an opinion contains four separate and distinct questions. As they are closely related to each other, we will first point out the statutes and authorities applicable thereto and then answer said questions in the order in which you ask them.

61 Corpus Juris, Section 1015, page 791, states:-

"Except for reviewing boards of officers deriving their existence and power from the constitution, the authority of officers or boards for the review or correction of assessments is entirely statutory and must be strictly confined to the limits marked out by the statute and exercised in conformity therewith; and, subject to constitutional limitations, it rests entirely with the legislature to bestow as much or as little power as it sees fit upon a particular board or officer. Thus the character of the corrections or changes which the board is authorized to make depends on, and is to be determined by, the provisions of the prevailing applicable statutes. Likewise, the manner in which the board of review is empowered to exercise the substantive authority conferred upon it is controlled by statutory provisions relating to the manner in which such authority is exercisable. *****"

The State Tax Commission is purely a creature of the statutes and has no powers except those specifically given it by statute. It is likewise true that a taxpayer or other person has no right to appeal to said commission unless that right is expressly granted by statute. The only rights given taxpayers or other persons to file a complaint with the State Tax Commission is conferred by Sections 9854 and 9855, R. S. Mo. 1929. Subdivision 3 of Section 9854 reads:

"(3) To receive all complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, to investigate the same and to institute such proceedings as will correct the irregularity complained of, if any irregularity be found to exist."

The above section does not give the commission authority, to grant a hearing for reassessment of property on the complaint of third persons. It simply requires the commission to receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, to investigate same and to institute proceedings to correct the irregularities if they find, from their investigation, that any irregularity exists.

Section 9855, R. S. Mo. 1929, provides that after the various assessment rolls, required to be made by law, have been passed upon by the several boards of equalization and prior to the making and delivery of tax rolls to the proper officers for the collection of taxes, the several assessment rolls shall be subject to inspection by the commission or any member or authorized agent or representative thereof; and, if it shall appear to the commission after such investigation, or if it be made to appear to such commission by written complaint of any taxpayer that property subject to taxation has been omitted from said rolls or individual assessments have not been made in compliance with law, the commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment rolls and a sworn statement of the person or persons whose assessments are to be considered.

The section above deals only with property subject to taxation that has been omitted from the assessment rolls and to individual assessments that have not been made in compliance with law, that is, those assessments that are void because illegally made. This section does not authorize the commission to grant a hearing on a complaint of third parties for re-assessment of property.

As stated above, the section applies only to omitted property and to illegal assessments and even then it is discretionary with the commission as to whether they will issue an order for a review, as the term "may issue an order" clearly implies discretion on the part of the commission.

In the case of In Re Durant National Bank, 230 Pac. (Okla.) loc. cit. 714, the Court said:

***** The tax ferret nor county treasurer have any jurisdiction to reassess property that has been assessed, although grossly undervalued. This court in considering section 9798, supra, relating to tax ferrets, in the case of Wolverton Hardware Co. v. Porter, 61 Okla. 171, 160 P. 906, stated:

"From an examination of this statute it is clearly apparent that the purpose contemplated is to assess property that has been omitted from assessment and that has escaped taxation, and that it does not confer the power or authority to revalue or reassess for the purpose of taxation any property that may have been overvalued or previously assessed. The object of the statute is to discover omitted property, and this is the entire scope ***** contemplated by the act."

In view of the above, it is our opinion that the tax commission is not required to and does not have the authority to grant a hearing to reassess property that has already been legally assessed.

The Kentucky statutes provide that any taxpayer feeling himself aggrieved by the action of the Board of Supervisors may appeal. In the case of Cossar v. Klein, 14 S. W. (2d) loc. cit. 161, the Court stated:

"(1) The first question to be determined is the right of Klein to maintain an action on behalf of the other stockholders. Section 4128, Kentucky Statutes, provides that any taxpayer feeling himself aggrieved by the action of said board of supervisors may appeal to the quarterly court within thirty days after the final adjournment of the said board, by filing with the judge of said court a certified copy under the hand

of the clerk of said board of the action taken. It further provides that 'he shall have the right to appeal from the decision of the quarterly court to the Circuit Court and then to the Court of Appeals in the same manner that the law now allows appeals in civil cases.' The procedure is purely statutory, affording a remedy for an aggrieved taxpayer, if he thinks his property is not liable to assessment, or that an excessive valuation has been placed upon it. There is nothing in the statute which authorizes one taxpayer to act for another or others, and in the absence of such provision in the statute itself, no such right exists. The statute confines the remedy to the aggrieved taxpayer, and he may not assume to act for others. *****

61 Corpus Juris, Section 1007, page 783, states the law as follows:

"It is only those who are prejudicially affected by errors committed in the assessment of property who have a right to a review thereof, and, in the absence of any showing of prejudice resulting from the assessment, a person has no such right and hence cannot complain of a failure to create any proper board for the purpose of reviewing assessments or of the failure of a reviewing board to consider his claim or claims of similar character or to notify him of its meeting."

An individual taxpayer, who complains to the tax commission that his property has been fraudulently or illegally assessed, is entitled to have the commission grant him a hearing and it is their duty to pass upon the complaint.

In Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 19 S. W. (2d) loc. cit. pages 751 and 752, the Court said:

"(8) Appellant's grievance is, not that its property was overvalued, but that it was discriminated against through the undervaluation and omission in part, of other property subject to taxation. Had it, at any time before the tax books were delivered to the collector, filed

complaint with the state tax commission, that body, in the proper exercise of its jurisdiction, would have granted a hearing, and would have heard evidence with respect to the valuations complained of, and, if the charges contained in the complaint had been found to be true, the valuations placed on its property would have been lowered, or that on other property raised, the property omitted from the assessment roll would have been placed thereon, and the discrimination complained of thereby removed. The remedy provided by statute is adequate, certain, and complete.

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"Had appellant made timely complaint to state tax commission, the commission and the state board of equalization, to which it renders an auxiliary service, would, it must be presumed, have at once corrected the alleged discrimination in the assessments, and the state, county, and the road and school districts would have received punctually, and without abatement, the revenue accruing to each of them respectively under the law. It was clearly guilty of laches in not so doing.

"We do not recede from any of the positions taken in the Schlotzhauer Case; we merely supplement its holdings by the further holding that a taxpayer, who is aggrieved by a fraudulent assessment of his property, is not entitled to relief in a court of equity until he has first exhausted the remedies afforded by the statute."

The above case deals solely with a fraudulent assessment and not merely with an assessment which the property owner may, in his opinion, think excessive.

You inquire whether or not the complainant can be required to give bond and pay the cost of a hearing or any part thereof. The only authority for requiring a complainant to pay any costs of a hearing is subdivision 4 of Section 9853, R. S. Mo. 1929, which subsection reads as follows:-

"(4) Whenever a subpoena is issued at the instance of a complainant, respondent, or other party to any proceeding before the commission, the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation."

This section does not give the commission authority to require the complainant to give bond for the costs of a hearing but does provide that whenever a subpoena is issued at the instance of a complainant, the cost of service thereof and the fee of witness shall be borne by said party. It further provides that the witness may, at the time of service of subpoena, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one day's attendant. If the witness so demands his fees, it would be up to the complainant to furnish them, if he desired said witness to attend the hearing.

We will not answer your questions.

I.

IS THE COMMISSION COMPELLED TO GRANT A HEARING FOR REASSESSMENT BY ANY CITIZEN WHO SEES PROPER TO FILE SUCH A COMPLAINT?

The provisions of the statutes do not authorize the Commission to grant a hearing for reassessment of property on the complaint of any citizen who sees proper to file one. The only instance in which the tax commission is compelled to grant a hearing is when a taxpayer files a complaint that his property has been illegally or fraudulently assessed. It has no power to grant a hearing on complaint of a third party unless such complaint charges that property subject to taxation has been

omitted from the assessment rolls or individual assessments have not been made in compliance with law.

II.

IS THE COMMISSION REQUIRED TO GRANT A HEARING ON REASSESSMENT OF PROPERTY IF THE COUNTY COURT, THE ASSESSOR OR ANY MEMBER OF THE COUNTY BOARD OF EQUALIZATION FILES A COMPLAINT ASKING A RE-HEARING AFTER THE BOARD HAS PASSED ON THE ASSESSMENT OF SUCH PROPERTY?

The statute does not require or authorize the commission to grant a hearing for reassessment of property on the complaint of the county court, assessor, or member of the county board of equalization.

III.

IF A COMPLAINT IS FILED AND A REQUEST FOR HEARING MADE OF THE TAX COMMISSION, CAN THE COMMISSION REQUIRE THE COMPLAINANT TO GIVE BOND AND PAY THE COST OF SUCH PROCEEDING, OR ANY PART THEREOF?

The Tax Commission has no authority to require a complainant to give bond to secure the cost of a hearing. If subpoena is issued at the instance of the complainant, the cost of service thereof and fees of witness shall be borne by said complainant and the witness may, at the time of service of the subpoena, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and for one day's attendant. If said fees are not paid or tendered at that time, he is not required to attend said hearing. Since said fees are to be paid by the complainant,

it would be his duty to pay or tender payment of said fees at the time of service of subpoena if the witness demands them.

IV.

DOES THE PERSON FILING COMPLAINT HAVE TO BE A TAXPAYER IN THE DISTRICT IN WHICH THE COMPLAINED OF PROPERTY IS LOCATED? AND WILL SUCH COMPLAINANT HAVE TO MAKE A PROOF OF DAMAGE FROM THE ASSESSMENT COMPLAINED OF?

Under the terms of the statute, any taxpayer may file a complaint with the commission. The statutes do not require the taxpayer to be a resident of the district in which the complained of property is located or that he make any proof of damage from the assessment complained of. As held above, it would be discretionary with the commission whether or not to grant a hearing on such a complaint.

Yours very truly,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JET/afj