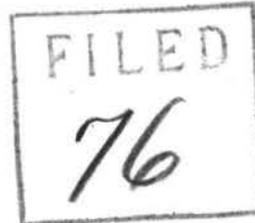


TAXATION:
ASSESSORS:

Duty to call on and require taxpayer to return assessment list; but not required to view property or prepare list except where none is returned. Assessor may not require taxpayer to appear before him at designated time or place in county in lieu of his official call upon taxpayer.

December 21, 1949

Honorable Allen Rolston
Prosecuting Attorney
Schuyler County
Lancaster, Missouri



1/4/50

Dear Sir:

This is to acknowledge receipt of your recent letter requesting an opinion of this department, which request reads as follows:

"I would like your opinion on the following questions relating to the duties of the county assessor in a county of the fourth class,

"First: is the county court required to furnish and equip an office for the county assessor?

"Second: In making the assessment, is it the duty of the assessor to call on and take the assessment list of the residents of the county?

"Third: Has the county assessor any authority to require the resident whose assessment is to be made to call on the assessor at some place designated by the assessor in each township: To put this question another way is it the duty of the assessor to personally see and list the property that is to be assessed, or can he require the residents of the county to call on him at a certain place and time to list the property that is subject to taxation? or to put it yet another way, is it the duty of the assessor to travel over the entire county and inspect the property and

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call on the taxpayer at his residence?

"Our county assessor has called on me for this information. While I think I can answer his question, I not sure on some of the points, and therefore, would like your opinion on these questions."

From the facts given in your letter it appears that Schuyler County is a county of the fourth class, and your first question is whether it is the duty of the county court to furnish and equip an office for the county assessor.

Under the provisions of Article VI, Section 7 of the Missouri Constitution of 1945, the county court has been given the power to "* * * manage all county business as prescribed by law,* * *" In the cases of Bradford vs. Phelps County, 210 SW (2d) 996, and ex rel. Kowats vs. Arnold, 356 Mo. 661, it has been held that county courts no longer have the status of "constitutional courts" exercising juridical powers of courts, but that county courts (since the adoption of the 1945 Constitution) have been reduced to the status of ministerial bodies, with power to manage all of the business of the county.

With reference to the power of the county court to manage all of the county business, Article VI, Section 7 of the 1945 Constitution is similar to that of Article VI, Section 36 of the Constitution of 1875. In discussing certain phases of the county court's powers under said latter constitutional provision, in the case of State ex rel. Mitchell vs. Rose et al., 281 SW 396, it was held to be the duty of the county court to look after the public funds, examine, audit, adjust and settle all accounts to which the county shall be a party.

Although we are unable to point out any specific section of the statutes enjoining on the county court the duty to provide and equip an office for the benefit of the assessor, it appears that the office would not only be a convenience or a necessity to the assessor but that it would be a greater benefit to the residents of the county or others having official business with the assessor. It might be argued that the office would be unnecessary since it is the assessor's duty to call upon resident taxpayers of the county and furnish them with proper blanks for listing property subject to taxation. When it is considered that the calls required to be made are only a small part of the duties of the assessor, it is believed that the other duties of the assessor will in no way lessen the need for an office where the assessor may perform such duties and where the public may find him or his deputies during business hours of the day.

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In the case of Ewing vs. Vernon County, 216 Mo. l.c. 692, in passing upon the duty of the county court of Vernon County to provide office space, equipment and supplies for the recorder of deeds the court said:

"* * * There is not a word in the chapter (chap. 147), relating to providing chairs, desks, pens, ink, stationery, stoves, racks, tables, spittoons, or other office paraphernalia. There is even no word relating to a room in which to keep his office or fuel to heat it. But when we read other provisions of the general statutes relating to building a courthouse and heed the underlying theory that county offices should be kept there, all questions relating to a room vanish; * * *"

In the case of Buchanan vs. Ralls County, 283 Mo. 10, it was held that it was the duty of the county court to provide suitable office space, heat, lights and janitor service for the county treasurer and that upon the failure of the county court to make such provision the county treasurer had the right to secure an office, light, heat and janitor service at her own expense and that the county court is bound to reimburse her for the reasonable cost of same. Also in the case of Harkreader vs. Vernon County, 216 Mo., 696, it was held that the sheriff was entitled to janitor service at the expense of the county and that it was the duty of the county court to reimburse the sheriff for reasonable outlays for such service.

In view of the foregoing constitutional provisions and court decisions to the effect that county officials are to be furnished with suitable office space, equipment and supplies at public expense, our answer to your first question is that it is the duty of your county court to provide and equip an office for the assessor of your county.

Your second question is whether it is the duty of the assessor to call on and take the assessment lists of residents of the county.

In counties aside from those of the first class, the statutory method of procedure for the assessment of real and tangible personal property located in the county is found in Section 10, page 1785 of an act relating to assessors and assessment of property of the Laws of Missouri for 1945. Since your county is one belonging to Class 4, the provisions of this act fully apply. Section 10 of said act reads in part as follows:

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"The State Tax Commission shall design the necessary assessment blanks and they, together with the assessment books, shall be furnished by the county clerk at the expense of the county, and shall be turned over to the assessor at least sixty days prior to January 1st of each year. After receiving the necessary forms the assessor or his deputy or deputies shall, except in the City of St. Louis, 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 in the manner following, to wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable real and tangible personal property in the county owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax and except all other property which may be exempted by law from taxation. The person listing the property shall enter a true or correct statement of such property, in a printed blank prepared for that purpose; which statement after being filled out, shall be signed and either affirmed or sworn to as provided in this chapter. The list shall then be delivered to the assessor.* * *"

This section outlines the method of procedure to be followed by the assessor or his deputies in taking assessment lists under ordinary circumstances. When the assessor or his deputy calls at the office, place of business, or residence of the person required to list property and it is found that such person is sick, absent, or has neglected to return the list, or has died prior to such call, then the procedure to be followed in taking the list must be that set out in Section 11 which reads as follows:

"If any person required by this chapter to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, or the usual place of residence or business of such person, a printed assessment blank and a printed notice, requiring such person to make out and mail or take to the office of said assessor, not more than twenty days from the date of such notice, a sworn statement of the property which he is required to list. If any such person

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shall have died prior to the time when the assessor calls for such list, the assessor shall deliver such assessment blank and printed notice to the executor or administrator of such deceased person, and such executor or administrator shall make out and deliver to the assessor such sworn statement of all the property of such decedent. The date of leaving such notice and the name of the person required to list the property shall be carefully noted by the assessor; and if any such person shall neglect or refuse to deliver the statement, properly made out, signed and sworn to as required, the assessor shall make the assessment, as required by this chapter."

Under the provisions of Section 10, supra, it is the duty of the assessor or his deputy to call upon each resident of the county. Said section reads in part as follows: "* * * He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement * * *"

In attempting to ascertain the exact nature of the duty of the assessor in making these calls, and the meaning the legislature must have intended to give this section, it is necessary that we notice the use made on the word "shall."

Generally the word "shall" used in a statute is given a mandatory meaning and it was so declared in the case of *Mau vs. Stoner*, 83 Pac., 218, 219.

In the case of *State ex rel. vs. Stevens vs. Wurdeman*, 295 Mo., 566, it was held that usually the word "shall" indicates a mandate, and, unless there are other things in a statute, it indicates a mandatory statute.

Applying the rule announced in these cases to the law in question it appears that by the enactment of Section 10, it was the intention of the legislature to provide a method of procedure for the assessor to follow in making assessments of real estate and tangible personal property in each county. A duty was imposed upon the assessor to call upon each resident of the county for that purpose. No provision is made in this section for the assessor to do something else in lieu of the call, nor does it leave the matter of making the call within the discretion of the assessor, and we construe the words "shall call," "shall require," as mandatory.

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In answer to your second question we submit that it is the mandatory duty of the assessor or deputy assessor to call upon each resident of the county and to require such persons to return an assessment list of all taxable real and tangible personal property owned or controlled by such person.

The first part of your third question is whether or not the assessor has any authority to require the resident whose assessment is to be made to call upon the assessor at some place designated by the assessor in each township in the county. In discussing this question we repeat that Section 10, supra, required a mandatory duty of the assessor or his deputy to personally call upon each resident of the county at his office, place of business, or residence of the persons required by the act to list property and to require them to make a true statement of the real and personal property required to be listed and to return such lists to the assessor. We are unable to find any provisions in Section 10 and we are also unable to find any other provisions of the Act or of any general statutes that would authorize the assessor to require residents of his county to meet him at a designated time and place in each township of said county in lieu of the personal calls he is required by law to make. We therefore conclude that the assessor does not have this authority and that the answer to the first part of your third question is "no."

The second part of your third question is whether it is the duty of the assessor to personally see and list property that is to be assessed or may he require residents of the county to meet him at certain times and places to list property subject to taxation.

We believe that we have sufficiently discussed that part of your question having to do with the assessor's duty to call upon each resident of the county and require him to make a list of property subject to taxation and we will not repeat anything of this nature except to say that the assessor cannot require residents to meet him at any specified time or place in the county but that the law requires him or his deputies to make the call. His duty in this respect will have been performed when he makes one call upon each resident and he is not required to make additional calls.

Under the provisions of Section 11 of the Act, when the assessor makes his official call upon the person required to list property and finds that such person is sick or absent it then becomes the assessor's duty to leave an assessment blank and printed notice at the office, place of business or usual place of residence of such person requiring him to complete the

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list and return it to the assessor not more than twenty days from the date of the notice. In the event that the person required to return the assessment list has died prior to the assessor's visit then the assessment blank and notice must be delivered to the executor or administrator of such person and it then becomes the duty of such executor or administrator to make and return the assessment list to the assessor.

The third part of your third question asks whether it is the assessor's duty to travel over the entire county and inspect the property and call upon the taxpayer at his residence.

In view of what has been previously stated herein and for the same reasons we are of the opinion that it is the assessor's duty to travel over the entire county and call at the office, place of business, or residence of each person required to list real or personal property for assessment.

With reference to that part of the question in which inquiry is made as to the duty of the assessor to call and personally inspect the property listed on the assessment blank we wish to discuss this matter more fully.

Section 10, supra, does not require the assessor or his deputy to personally view the property listed on the assessment blank at the time he makes his official call. Said section in part provides: "* * * The person listing the property shall enter a true or correct statement of such property, in a printed blank prepared for that purpose; which statement after being filled out, shall be signed and either affirmed or sworn to as provided in this chapter. The list shall then be delivered to the assessor.* * *" This section does not require the assessor or his deputy to be personally present at the time of the signing, affirming, or swearing to the list. While the assessor or deputy assessor may be personally present and may administer the oath to the person making the list, the law does not state that such officer or deputy are the only ones who may administer the oath. The oath may in their absence be administered by other persons. With reference to the administering of such oaths, Section 16 of the Act in part provides:

"Assessors and deputy assessors, county and circuit clerks, notaries public, judges of the county courts, magistrates, and all other judicial officers, are empowered and authorized to administer any oath relating to the assessment of property required by this chapter,* * *"

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The only reference made in the entire Act to the assessor personally viewing the property to be assessed is found in Section 14 which reads as follows:

"Whenever there shall be any taxable property in any county, and from any cause no list thereof shall be given to the assessor, in proper time and manner, the assessor shall himself make out the list, on his own view, or on the best information he can obtain; and for that purpose he shall have lawful right to enter into any lands and make any examination and search which may be necessary, and may examine any person upon oath touching the same."

Under the provisions of this section it becomes the duty of the assessor or his deputy to view the property subject to taxation and to list it only when no list has been returned by the person required to return same.

CONCLUSION

In view of the foregoing it is the opinion of this department that the management of all county business has, under the provisions of Article VI, Section 7 of the Constitution of 1945, been vested in the various county courts of the state. That in the management of the affairs of the county, the County Court of Schuyler County has the power and it is the duty of said court to provide and equip an office for each county official of said county, including that of the assessor, at public expense.

It is the further opinion of this department that the duty of the assessor of Schuyler County in calling upon persons required to make and return assessment lists at the office, place of business or residence of such persons and to require them to make and return such lists is mandatory and that the assessor may not require such persons to appear before him at a designated time and place in the county for said purpose. That he is not required to be present at the time the list is prepared, signed and sworn to nor to view the property listed except in those cases where no list has been returned in which latter event it becomes his duty to view the property and prepare the list. He may designate his office or some other place in the county as

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the place where the completed lists may be personally delivered or mailed to him without violating any of the provisions of the Laws of 1945 relating to assessors and the assessment of property.

Respectfully submitted,

PAUL N. CHITWOOD,
Assistant Attorney General

APPROVED:

J. E. TAYLOR,
Attorney General



PNC:nm