

ASSESSMENTS:  
CITIES, TOWNS & VILLAGES:  
SCHOOLS:  
COOPERATIVE AGREEMENTS:

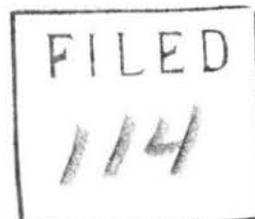
1. The St. Joseph School District does not have authority to expend its funds to contract with a professional firm to reevaluate real property within its boundaries. 2. The St. Joseph School District does not have the authority to enter into a cooperative agreement with the City of St. Joseph and Buchanan County in

undertaking reevaluation of real property which is a common source of revenue to all three. 3. The county of Buchanan has the authority to contract with a private professional firm to undertake the reevaluation of real property within the County as a means of assisting the Assessor, and authority to enter into a cooperative agreement with the City of St. Joseph, but not with the St. Joseph School District. 4. Such a contract with a private professional firm may be financed with funds from general revenue, if available; a levy approved by the voters under section 137.073, RSMo Supp. 1967, is not mandatory. If a levy is approved as provided in Section 137.037, such levy must be included in the general levy for county purposes provided in section 11b of Article X of the Constitution of Missouri.

OPINION NO. 114

September 23, 1969

Honorable Ronald Reed, Jr.  
State Representative  
81st District  
2602 Francis Street  
St. Joseph, Missouri 64501



Dear Representative Reed:

This is in response to your request for an opinion dated January 20, 1969, in which you ask the following questions:

1. Does the St. Joseph School District have the authority to expend its funds to contract with a private professional firm to reevaluate real property within its boundaries?
2. Does the St. Joseph School District have the authority to enter into a cooperative agreement with the City of St. Joseph and the County of Buchanan in undertaking the reevaluation of real property which is a common source of revenue to all three?
3. Does the County of Buchanan have the authority to contract with a private professional firm to undertake the reevaluation of real property within the county and authority to enter into a cooperative agreement for such purposes with the St. Joseph School District and the City of St. Joseph?
4. If the County of Buchanan has authority to enter into a contract as set out in paragraph 3, can it be financed with funds from general revenue or is a levy approved by the

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voters mandatory in order to finance such a reevaluation?

As to Question 1, you have noted in your enclosed memorandum that there is no specific reference in Chapter 164, RSMo 1959, concerning tax levies by school districts, to authority in school districts to spend money on real property evaluation; no such reference has been discovered by this office there or in any other place. Considering the generally applied rule of interpretation, that school districts are limited to those powers expressly conferred by statute, or necessarily implied from those conferred or from duties imposed by statute (C.J.S. Schools and School Districts, § § 119, 277; Wright v. St. Louis Board of Education, 246 SW 43 (Mo. Sup. 1922); Cape Girardeau School District v. Frye, 225 SW 2d 484 (St. L. App. 1949)), there is not sufficient reason to imply any authority to use its funds to reevaluate property or to contract for such a purpose with a private firm. Assessment, valuation of property, as to school taxes, is a function of the County Assessor. See Chapter 137, RSMo 1959, and the reference in section 164.041, RSMo Supp. 1967, that: "the county clerk shall proceed to assess the amount so returned (estimates of school districts revenue needs) against all taxable property in each district, as shown by the last annual assessment for state and county purposes."

As to Question 2, the answer clearly is that the St. Joseph School District does not have the authority to enter into a cooperative agreement with the City of St. Joseph and the County of Buchanan in undertaking the reevaluation of real property because it is not "within the scope of the powers of such municipality and political subdivision," as required by section 70.220, RSMo 1959, which is the authorizing statute for such agreements. That the project of reevaluation of real property is not within the power of the school district is discussed in the prior paragraph.

Your question three raises first the question if Buchanan County has the authority to contract with a private professional firm to undertake the reevaluation of real property and second whether it has authority to enter into a cooperative agreement for such purposes with the St. Joseph School District and the City of St. Joseph. Authority for the conclusion that Buchanan County has the authority to contract with a private professional firm to undertake the reevaluation of real property within the county for the purpose of aiding the county assessor in securing full and accurate assessment of all taxable property is found in section 137.230(2), RSMo Supp. 1967, which provides that:

"In all counties the county court may, in addition to the foregoing, provide for securing a full and accurate assessment of all property therein liable to taxation, or in lieu thereof, by order entered or record, adopt for the whole or any designated by order entered or record, adopt for the whole or any designated part of the county any other suitable and efficient means or method to the same end, whether by procuring maps, plats or abstracts of titles of the lands in the county or designated part thereof or otherwise and may require the assessor, or any other officer, agent or employee of the county to carry out the same, and may provide the means for paying therefor out of the county treasury.

This particular section was cited by the Missouri Supreme Court in Hellman

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v. St. Louis County 302 SW 2d 911(1957), an action by a resident taxpayer against the County and others to enjoin enforcement of an allegedly illegal contract entered into between the court and two appraisal companies for appraisal of property in connection with ultimate appraisal of real property for taxation purposes, and was considered by the court to be authority for such a contract, even considering the rule that the county court had only such authority as expressly granted or necessarily implied; the court considered there was no delegation of authority of the assessor to others by these contracts which were to assist the assessor. Alternatively the court did state that, for a Home Rule Charter County, the statute was a declaration that such a procedure was not contrary to public policy and that the procedure could be, and was, authorized by the County Charter and ordinances. This office has previously concluded and still concludes that the procedure adopted and approved in the Hellman case was not dependent upon the added authority of the provisions of the County Charter (Op. Atty. Gen., Dalton, 10-4-61; Collins, 11-13-63).

Another aspect of your question 3 concerns the authority to enter into a cooperative agreement with the City of St. Joseph and the St. Joseph School District. The lack of authority of the School District in this area is referred to above. The authority of the City of St. Joseph is a different problem. Inasmuch as the City is a Constitutional Charter City, reference should be made to the City Charter. The City Charter contains the following provisions pertinent to this particular problem:

Section 1.3 POWERS OF THE CITY. The City shall have all powers of local self-government and home rule under the Constitution and laws of Missouri, and such powers as the legislature may be competent to grant; except as prohibited by the Constitution or laws of the State, the City may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever. Such powers shall be exercised in the manner prescribed in this charter, or, if not prescribed herein, in such manner as may be prescribed by ordinance of the Council.

Section 2.13 POWERS. Without limitation of the powers conferred upon the City by Section 1.3 of Article I of this charter, or by any other provision hereof, the Council shall have power by ordinance not inconsistent with this Charter to do, but shall not be restricted to, the following:

(1) Assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation not expressly prohibited by law; provide for enforcing the prompt payment and for penalties for delinquency thereof; and adopt such classifications of the subjects and objects of taxation as may not be contrary to law.

(25) Contract and be contracted with, and sue and be sued.

(29) Enact, adopt, and enforce all ordinances, rules and regulations; do all things, and exercise all governmental and municipal authority necessary, needful, and convenient, contributing to or bearing a substantial relation to the full and complete exercise of all the powers in this charter enumerated.

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(3) Co-operate, or join by contract or otherwise, with other cities, with counties, states, the United States, or other governmental bodies, singly or jointly or in districts or associations for promoting or carrying out any of the powers of the City, or for the acquisition, construction or operation of any property, works, plants or structures convenient or necessary for carrying out any of the purposes or objects authorized by this charter.

Section 6.2 (13) (The Director of Finance Shall) Assess, or cause to be assessed, on a just and equitable basis, and as provided by law, all taxable property in such manner and within such time as the Council may prescribe.

Section 6.15 ASSESSMENT, LEVY AND COLLECTION OF TAXES. The Council shall, by ordinance, provide for the assessment, levy and collection of all general and special taxes; provide for the enforcement of the prompt payment of the same; provide penalties for the delinquency thereof; provide for the collection of delinquent taxes on real or personal property by the sale of such property by the City or by suit instituted by the City; prescribe the procedure at such sales and provide that the City may become the purchaser at such sale.

The broad grant of authority contained in these sections clearly authorizes contracting with a private professional firm to undertake the reevaluation. Especial attention is invited to the provisions of Section 6.2 (13) that the Director of Finance is to assess or caused to be assessed, on a just and equitable basis, and as provided by law in such manner as the Council may prescribe. This language is comparable to the language referred to in the Hellman case above, in the County Charter, "to provide for assessment, levy, equalization, and collection of all taxes now and hereafter authorized by Constitution or the law and to prescribe a method or system to facilitate the assessment, calculation, extension, and collection of taxes", as sufficient to authorize such a contract. The words, caused to be assessed, just and equitable, and in such manner, clearly give a broad authority to contract with a professional firm to aid in the assessment process.

Section 70.220, RSMo. 1959, implementing section 16, Article VI of the Constitution of Missouri authorizing political subdivisions to cooperate with other subdivisions for any "common service" then clearly authorizes the city and the county which have been shown to have the authority to contract individually, to cooperate in the project with a private firm, the City's part to be concerned with valuation of property in the city. A broad interpretation of this section was suggested in School District of Kansas City v. Kansas City, Mo., 382 S.W.2d 688 (Mo. Sup. 1964). Additionally it should be noted that section 70.220 also contains authorization to "contract" with any "private person, firm, association or corporation for the planning, development, evaluation, acquisition or operation of any public improvement facility, or for a common service." Although this portion is not cited as principal support for the conclusion of authority to contract with private firms to provide a service, it at least suggest that the legislature contemplated under some circumstances the employment of private firms to assist in providing a necessary public service.

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In your fourth question you ask whether the contract for reevaluation of property can be financed by funds from general revenue or whether a levy must be approved by a majority vote under Section 137.037 before the reevaluation can be made. Section 137.037, RSMo Supp. 1967 provides in part as follows:

"The county court of any county may, at any general election, submit to the qualified voters of the county a proposition to authorize a levy not to exceed two mills on the dollar of assessed valuation of all tangible property taxable by the county for one year to pay the cost of contracting with a private person or firm to reevaluate all real property subject to taxation by that county; provided, however, that the governing body of counties of the first class may by order of record require such reevaluation to be made by the county assessor of such county and may use said revenue to provide necessary additional employees, office equipment and supplies in the office of the county assessor for such purpose only.

\* \* \* \* \*

If the proposition receives a majority of the votes cast thereon, the county court shall impose such levy for one year. Any excess collected in the last year in which the levy is imposed shall be transferred to the general revenue fund of the county."

It is our view that the cost of reevaluation is to be paid out of general revenue whether an election is held under Section 137.037 or not.

If an election is held and a majority vote is received, the levy authorized to be used for reevaluation purposes forms a part of the general levy for county purposes. The effect of the vote is to make certain that the funds derived from the tax levy authorized for one year shall be used only for property reevaluation purposes.

Section 11(b) of Article X of the Constitution of Missouri provides that the maximum tax rate to be levied by counties is as follows:

"For counties--thirty-five cents on the hundred dollars assessed valuation in counties having three hundred million dollars, or more, assessed valuation, and fifty cents on the hundred dollars assessed valuation in all other counties;  
\* \* \*"

Section 11 (c) of Article X of the Constitution of Missouri provides that such tax rates may be increased for county purposes only by a two-thirds vote.

If it were held that Section 137.037 authorizes a levy in addition to the constitutional limit on taxes for county purposes such section would be unconstitutional because Section 137.037 purports to authorize an increase above the constitutional limit by a majority vote whereas the Constitution requires a two-thirds vote in order to authorize a tax levy above constitutional limitation.

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However, it is our view that Section 137.037 does not purport to provide for a tax levy above the constitutional limit but provides that the county court must in the year such levy is voted expend the funds received from such levy for reevaluation purposes but the levy authorized by Section 137.037 is included within the maximum levy authorized for county purposes.

In a county with less than three hundred million dollars property valuation in a year in which the county court determines that a twenty-cent levy is necessary for county purposes and the people vote a levy of twenty cents for one year under Section 137.037 the court would be compelled to levy such additional twenty cents for one year so that the total levy for county purposes including reevaluation of property for such year would be fifty cents.

In no event could the county court in such county levy more than fifty cents without a two-thirds vote of the people and if a fifty-cent levy were made in the year in which a twenty-cent levy was authorized for reevaluation under Section 137.037, only thirty cents of the fifty-cent levy could be used for other county purposes.

However, we believe it to be clear that the county court can without a vote under Section 137.037 expend funds derived from the general tax levy for county purposes for reevaluation purposes.

The provisions of Section 137.230 (2) quoted supra clearly provide that the county court can enter into a contract for a reevaluation of property and provide the payment for such reevaluation can be made out of county general revenue.

There is no language in Section 137.037 that in anyway purports specifically or impliedly to repeal Section 137.230 (2) or to make the procedure to be followed under Section 137.037 the only or exclusive method to be followed in reevaluation of property. Therefore, the county court has power and authority without a vote under Section 137.037 if funds are available to enter into a contract for reevaluation of property under Section 137.037 (2) the cost to be paid out of county general revenue.

#### CONCLUSION

It is the opinion of this office that:

1. The St. Joseph School District does not have authority to expend its funds to contract with a professional firm to reevaluate real property within its boundaries.
2. The St. Joseph School District does not have the authority to enter into a cooperative agreement with the City of St. Joseph and Buchanan County in undertaking reevaluation of real property which is a common source of revenue to all three.
3. The County of Buchanan has the authority to contract with a private professional firm to undertake the reevaluation of real property within the County as a means of assisting the Assessor, and authority to enter into a cooperative agreement with the City of St. Joseph, but not with the St. Joseph School District.

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4. Such a contract with a private professional firm may be financed with funds from general revenue, if available; a levy approved by the voters under Section 137.037, RSMo Supp. 1967 is not mandatory. If a levy is approved as provided in Section 137.037 such levy must be included in the general levy for county purposes provided in Section 11 (b) of Art. X of the Constitution of Missouri.

Yours very truly,

A handwritten signature in black ink, reading "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH  
Attorney General