INHERITANCE TAXES:
APPRAISER'S HEARINGS:
PROSECUTING ATTORNEY'S
ATTENDANCE:

Prosecuting Attorneys of each county of the State are required, under provisions of Section 145.270, RSMo 1949, to attend all inheritance tax appraiser's hearings held in his county.

July 6, 1955

Honorable John S. Stevens
Assistant Prosecuting Attorney
St. Louis County
Clayton 5, Missouri

Dear Sir:

This department is in receipt of your recent request for a legal opinion which reads as follows:

> "Is the Prosecuting Attorney of St. Louis County required to attend all Appraiser's Hearings referred to in Paragraph 4 Sec. 145.150 Missouri Revised Statutes, 1949?"

The first inheritance tax law in Missouri was enacted in 1899, and was included in Chapter 1, Article XVI, of the 1899 Revised Statutes of Missouri, under the title "Collateral Inheritance Tax." Under Section 316 of this article the probate court was given jurisdiction to hear and determine all questions arising as to the tax that might arise affecting any devise, legacy or inheritance under that article, and under the same section the prosecuting attorney of the proper county was to represent the interest of the State in any such proceedings.

Under Section 312 of this article the Judge of the Probate Court having jurisdiction of the estate of the decedent was to appoint an appraiser to have an appraisal of the property subject to the inheritance tax, and such appraiser was to conduct an appraisal hearing and was given the power to subpoena witnesses, take evidence, under oath, and take depositions. Notice was to be given to all persons interested in the property appraised as to the time and place of appraisal. After such hearing or proceeding by the appraiser under Section 313, the appraiser was to make a written report of his findings to the Judge of the Probate Court and the judge would then assess the tax on the property and, from this assessment, an appeal was provided for to the probate court and notice of this appeal was to be given to all persons known to be interested therein.

The inheritance tax law remained unchanged until it was amended and altered by the Laws of 1917, page 114, when it was reenacted into what is now its present substance and form except for minor changes and additions. The appointment of an appraiser, his duties, and the holding of an appraisal hearing under the 1917 laws was substantially the same as that under the present law which is found in Sections 145.150 and 145.160, RSMo 1949; these two sections presently reading: Section 145.150

> "1. The probate court which grants letters testamentary or of administration, either original or ancillary, on the estate of any decedent, shall have jurisdiction to determine the amount of the tax provided for in this chapter and the person, persons, association, institution or corporation liable therefor, and to determine any question which may arise in connection therewith, and to do any act in relation thereto which is authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction.
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> "2. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this law, such finding and opinion shall be entered of record in said court, and thereupon the provisions of section 145.210 shall become inoperative as to the holders of funds or other property thereof, and there shall be no further proceedings relating to such tax, unless upon application of interested parties the existence of other property or an erroneous appraisement be shown.
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> "3. If it appear that said estate may be subject to such tax, it shall be the duty of the court to set a day for the hearing

and determining the amount of said tax and to cause notice thereof to be given in the same time and manner and to the same parties as is herein provided for appraisers, or the court, before determining such matters, may of its own motion, or on the application of any interested person, including the director of revenue, the prosecuting attorney or attorney general, appoint some qualified tax-paying citizen of the county, who is not executor, administrator or beneficially interested in said estate or the attorney for any of such parties, as appraiser to appraise and fix the clear market value of any property, estate or interest therein, or income therefrom which is subject to the payment of a tax under the provisions of this chapter.

"4. Every such appraiser shall make and subscribe, and file with the court appointing him, an oath that he will faithfully and impartially discharge his duties as such appraiser and that he will appraise all the property, estate, interest therein or income therefrom involved in the proceeding in which he is appointed at its clear market value and shall forthwith fix a time and place for hearing the evidence and shall file notice thereof with the court appointing him not less than ten days prior to the date so fixed and shall also give notice by mail to all interested persons whose address he may have, always including the director of revenue and the prosecuting attorney of the county."

Section 145.160

"1. The appraiser shall appraise all property, estate, assets, interest or income at its clear market value and he is hereby authorized to issue subpoenas and compel the attendance before him of witnesses and

> the production of books, records, documents, papers and all other material evidence, to administer oaths and to take the testimony of all witnesses under oath.
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> "2. He shall make report of his appraisement to the court in writing and shall return the testimony of the witnesses and all other evidence and such other facts in relation thereto as the court may by its order require, and such report shall be made within twenty days after the appointment of such appraiser, unless the court, for good and sufficient cause, by order gives such appraiser further time in which to report; provided, when the estate consists of personal property only, the prosecuting attorney may, with the consent of the director of revenue agree with the parties liable to pay any tax upon the amount of the same, and the court, if it approves such agreement, shall enter judgment accordingly and no appraiser shall be appointed."

Under the 1917 law and the law today, as found in these two sections, there is no specific mention of any duties of the prosecuting attorney as concerned with an appraisal hearing, but under Section 145.150 notice of time and place of the hearing is to be given to the prosecuting attorney by the appraiser and, under Section 145.270, RSMo 1949, and under Section 18 of the Laws of 1917, page 122, it is provided that the prosecuting attorney shall represent the State at all hearings, proceedings and trials under the provisions of the inheritance tax law in the probate and circuit courts.

It is inconceivable that the Legislature would have provided for notice of the appraisal hearing for any other reason than that the prosecuting attorney should attend the hearing; for if this were not so there would be no reason for notice to the prosecuting attorney. The Legislature, when it enacted Section 18 of the Laws of 1917 and enacted it again in 1949 in Section 145.270, must have, by its wording, intended that the prosecuting attorney attend the appraisal hearing. This conclusion is aided by the fact that in

all other sections of the inheritance tax law wherein the prosecuting attorney has duties to perform, it is specifically enumerated what duties there shall be. This can be shown by reviewing these sections. Section 145.170, RSMo 1949, authorizes him to file exceptions to the appraiser's report, and also to take an appeal from the court's judgment fixing the amount for the liability of the tax. Section 145.280, RSMo 1949, requires the prosecuting attorney to institute suit for any past due tax.

Section 145.300, RSMo 1949, requires the prosecuting attorney to bring suit for the recovery of any tax omitted by the court in which the administrative proceedings were had; thus it will be clearly seen that the Legislature must have intended something by the use of Section 145.270, since it would not have any bearing on these three previously mentioned sections, other than to reaffirm the duties of the prosecuting attorney required therein. But these three sections only relate to trials and suits for taxes, while the Legislature specifically stated in Section 145.270 that the prosecuting attorney was to represent the State, not only at all trials under the provisions of the inheritance tax law, but to represent the State also at all hearings and all proceedings. The duty of the prosecuting attorney at such appraisal hearing is to see that the State's interest as to the taxation of the property of the decedent is fully protected and to make certain that said appraisal is not fixed at a too low value.

CONCLUSION

Therefore, it is the opinion of this department that the prosecuting attorney or an assistant prosecuting attorney of each county of the state is required, under the provisions of Section 145.270, RSMo 1949, to attend every and all inheritance tax appraisers' hearings held under Section 145.150, RSMo 1949, in his county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Harold L. Volkmer.

Very truly yours,

John M. Dalton
Attorney General

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