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February 3, 1969

OPINION NO. 15
Answered by Letter
Culver

Honorable Don Witt
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Mr. Witt:

This is in answer to your request for an opinion of this office on two questions concerning the county assessor of a third class county. The first question is as follows:

"On page 3-7 the audit discusses the accounts of Francis M. Bell, Assessor. This in turn refers to pages 46, 46-1, and 46-2. In substance, it would appear that in some years Mr. Bell overcharged the state and county for the number of lists compiled by him and in other years he undercharged the state and county. From September 1, 1957 to August 31, 1958 the amount of the undercharge was \$154.81. From September 1, 1958 to August 31, 1959 the amount of the overcharge was \$130.37. From September 1, 1959 to August 31, 1960 the amount of the overcharge was \$325.78. From September 1, 1960 to August 31, 1961 the amount of the overcharge was \$310.53. From September 1, 1961 to August 31, 1962 the amount of the undercharge was \$392.21. During all the five years, this resulted in a net \$219.66 overcharge. As we understand it, \$107.34 was payment from the state and the county has issued a certificate of accuracy of the treasurer's account. The additional \$112.32 involves the county. The first question we wish to ask is whether or not Mr. Bell is liable for this amount, and if so, what procedure should be used in order to clarify the records in this matter. Mr. Bell has expressed a willingness and is ready to pay

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whatever amount is determined to be owing to the county by him, but in view of the many different statutes involved, we would appreciate knowing the exact procedure to be followed in this situation."

The second question reads:

"On page 45-A appears that for the period of September 1, 1958 to August 31, 1959 there was an overpayment of clerical compensation in the amount of \$335.00 and from September 1, 1959 to August 31, 1960 an overpayment of clerical compensation in the amount of \$565.00. These amounts were not paid to the assessor but were paid by the county to the assessors employees after he requisitioned these amounts. There may have been some confusion as to the exact amount allowable because of a statutory change in the amount of compensation allowed for such clerical assistance. This matter appears to have been clarified in subsequent years, and occurred only in the periods mentioned. The question is whether or not the assessor is liable to the county for such amounts paid as clerical compensation, and what procedure should be used to correct the records of the county should he be liable. Again, Mr. Bell is able and willing to pay any amount due to the state and county because of this overpayment of clerical assistance."

Regarding your second question insofar as the assessor's liability for excess payments to his assistants, since they are paid by the county court we do not believe the assessor himself is liable therefor. Section 53.095, RSMo 1959.

Regarding both questions, they basically seem to be whether or not without any formal court action, the county court and the private individuals involved could agree upon a settlement amount to be paid to the county and dispose of this matter, in view of the various over- and under-payments revealed by the audit. We believe previous opinions of this office answer this in the affirmative.

It is clear from the facts as stated in your letter that the county has claim against the assessor and his assistants

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for their overpayments, and that in turn the assessor has claim against the county for underpayments revealed by the audit. If suits were filed in court, the defendants in any given case could raise the applicable statute of limitations as a defense in view of the time expired since all the claims accrued. See Section 516.120 RSMo. 1959; Opinion No. 241, Bollinger, 10/1/65; Opinion to Dawes, 10/28/55, both enclosed.

The county is in fact legally bound to raise such affirmative statute of limitations defense on its behalf (Opinion No. 241, supra; Opinion No. 39, Henson, 9/13/54). It would thus appear that from a legal as well as practical standpoint, the various claims would be uncollectible in court if the defense of the statute of limitations were raised by the private parties as well as the county. However, the assessor as an individual could of course waive this defense.

It therefore appears that even without initiating formal civil court proceedings to collect these claims, a "settlement" by payment to the county of a sum agreed upon between the private individuals involved and the county court, is of course possible. See Opinion No. 89, Toohay, 11/14/61, enclosed.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Opinions to:

Dawes, 10/28/55
Bollinger, 10/1/65
Toohay, 11/14/61
Henson, 9/13/54