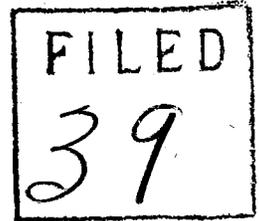


COUNTY ASSESSORS: County assessors in second class counties not entitled to additional compensation for acting as member of the county board of equalization.

COMPENSATION:

August 23, 1947



Mr. Chris F. Hessler
County Assessor
Buchanan County
St. Joseph, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"I wish to obtain your opinion on Section 11309, Page 1840, Laws of Missouri, 1945, commencing on the fifty-fourth (54) line.

"The County Assessor in all counties with less than 100,000 population, and the township assessors in all counties under township organization shall receive as compensation for services in taking the statements herein required and entering them in the book herein provided for, the sum of Twenty-five cents for each statement, and the members of the county board of equalization shall receive the same per diem for services under this article as provided by law for services in equalizing real and personal property, and the sum of the valuation of the statements as equalized by the county board of equalization shall be included in and made a part of the total valuation of property taxable for all purposes."

"I would like to know whether or not, I am entitled to such compensation, as described above, as a member of the Board of Equalization."

There are two well established rules of statutory construction that should be invoked in answering your request. The first is that a public official claiming compensation must point to the statute authorizing such compensation. In *Nedaway County vs. Kidder*, 129 S.W. (2d) 857, l.c. 860, 344 Mo. 795, the court said:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute

authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 542, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

See also Smith vs. Pettis County, 136 S.W. (2d) 282, 345 Mo. 839. The second rule referred to is that statutes granting a public official compensation should be strictly construed against the public official. In Ward vs. Christian County, 111 S.W. (2d) 182, l.c. 183, the court in so holding said:

"It is well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed." State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S.W. 655, 656. * * "

See also Maryland Casualty Company vs. Kansas City, Missouri, 128 F. (2d) 998.

Under Section 11001, page 1776, Laws of Missouri 1945, the county assessor is specifically made a member of the county board of equalization and said section reads:

"In every county in this state, except as otherwise provided by law, there shall be a county board of equalization consisting of the judges of the county court, the county assessor, the county surveyor, and the county clerk who shall be secretary of the board without vote. This board shall meet at the office of the county clerk on the second Monday in July, 1946, and on the second Monday of July of each year thereafter: Provided, that in any county having township organization the sheriff of said county shall also be a member of the board of equalization."

Section 11008, page 1778, Laws of Missouri 1945, provides that all members of the county board of equalization shall receive compensation at the rate of five dollars per day and that they are present and act in the performance of their duties with this condition that any county officers who are members of said board who now or hereafter may be compensated by salaries shall not be entitled to the compensation of five dollars per day. That section reads:

"The judges of the county court, the county surveyor, the county assessor, the sheriff, the county clerk, and those sitting as members as may otherwise be provided, shall receive five dollars per day for each day they shall be present and act in the performance of their duties as members of the county board of equalization. Provided, that the above county officers who are now or may hereafter be compensated by salary shall not be entitled to the compensation provided in this section."

The foregoing provision in restricting members of said board who are county officers and compensated by salaries from receiving the per diem does not specify the particular services for which the salary is paid to said county officer.

Section 1, page 1552, Laws of Missouri 1945, fixes the compensation for county assessors in counties of the second class and provides that the assessor in such counties shall charge a fee of twenty-five cents for each merchants tax statement taken as provided in Section 11309, page 1840, Laws of Missouri 1945, and also refers to other fees that said county assessors shall receive. Section 2 of the same act further provides that the county assessor shall receive for his services as provided in Section 1 of said act \$5,000.00 annually in lieu of fees provided in Section 1. Section 4 of the same act allows the county assessor for attending annual assessors' meetings called by the state tax commission the sum of five dollars per diem for time actually and necessarily spent in going to and returning from said meeting, and further makes provision for mileage, not to exceed five cents per mile. The foregoing sections read in part:

"Section 1. The fees for services of the county assessors in counties of the second class shall be thirty cents per list and six cents per entry for making real estate and tangible personal books, all the real and tangible personal property assessed to one person to be counted as one name; twenty-five cents for each merchants tax statement taken and entered in the tax book as required by Section 11309 of an act of the Sixty-third General Assembly known as House Committee Substitute for House Bill No. 536; twenty-five cents for each manufacturers tax statement taken and entered in the tax book as required

by Section 1 of an act of the Sixty-third General Assembly known as House Committee Substitute for House Bill No. 539 approved November 30, 1945; * * * "

"Section 2. The county assessor in counties of the second class shall receive as compensation for his services as provided in Section 1 of this act the sum of \$5,000.00 annually in lieu of the fees provided in said Section 1, to be paid in equal monthly installments out of the county treasury. All fees to be paid by the state as provided in said Section 1 shall be paid into the county treasury and shall be used to pay the compensation of the assessor and his deputies as provided in this act."

"Section 4. The county assessor in counties of the second class shall be allowed, for attending the annual assessors' meeting called by the state tax commission as provided in sub-section 14 of Section 15 of an Act of the 63rd General Assembly known as House Bill No. 528, approved December 19, 1945, the sum of \$5.00 per diem for the time actually and necessarily spent, including going to and returning from such meeting, and shall be reimbursed for transportation expense actually and necessarily incurred in going to and returning from said annual meeting, not to exceed 5 cents per mile."

Ordinarily when the Legislature places a public official upon a salary with the intent that said official shall receive no further compensation, the act usually provides for a certain annual salary in lieu of all fees, compensation, etc., by virtue of any statute or some similar provision. Section 2, page 1552, Laws of Missouri 1945, fixing the salary of the county assessor in counties of the second class at \$5,000.00 annually in lieu of fees provided in Section 1 of such act, might be construed to allow said assessor additional fees for services rendered other than those mentioned in Section 1 of said act, if it were not for Section 4, page 1553, Laws of Missouri 1945, supra, making only one exception to the salary provided for under Section 2 of the same act which entitles said assessor to receive \$5.00 per diem for attending meetings called by the state tax commission under House Bill No. 528,

passed by the 63rd General Assembly. Applying that familiar maxim "expressio unius est exclusio alterius" meaning the expression of one thing in a statute is the exclusion of another, this indicates that the Legislature fully intended county assessors of second class counties shall receive an annual salary of \$5,000.00, and in addition thereto, \$5.00 per diem while attending meetings called by the state tax commission, and no further compensation. See Kansas City Power and Light Company vs. Smith, 111 S.W. (2d) 513, 342 Mo. 75.

CONCLUSION

Therefore, it is the opinion of this department that while the county assessor in second class counties is also a member of the board of equalization in view of Section 11008, page 1778, Laws of Missouri 1945, prohibiting any county officer who is a member of said board who now or hereafter may be compensated by salary from receiving compensation provided for in Section 11008, supra, that the county assessor of your county, who now receives an annual salary, is not entitled to \$5.00 per day, that he is present and acting in performing the duties as a member of the county board of equalization.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

ARH:VLM