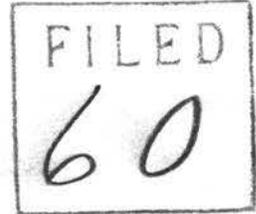


TAXATION: Where county assessor resigned before May 31st and did
ASSESSORS: not make verification of assessor's books, and successor
did not qualify until June 10th, verification by affidavit
of assessor's books is not required to make valid
assessments.



June 15, 1948

6-16
Honorable Emory L. Melton
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Sir:

This is in reply to your letter of recent date requesting
an official opinion of this department and reading as follows:

"The County Assessor of Barry County re-
signed his office on the 20th day of May,
1948, such resignation being accepted on
the 21st day of May, 1948. At that time
the Assessor's books were completed but
the verification required by Section
11000.38, Mo. R. S. A., had not been at-
tached thereto.

"Subsequent to the resignation mentioned
above, the Governor appointed a successor,
who qualified and took over the office on
the 10th day of June, 1948. In these cir-
cumstances, your official opinion is re-
quested upon the following questions:

"1. May the prior Assessor, who in fact
compiled the Assessor's books and made the
assessments for the year 1948, verify such
books in accordance with the requirements
of Section 11000.38, Mo. R. S. A.?"

"2. If such prior Assessor may not so
verify said books, may the successor and
now incumbent Assessor make such verifica-
tion under the above-mentioned statute or
any other applicable one?"

Section 11000.38, Mo. R. S. A., provides that the county assessor shall make out and return to the county court, on or before the 31st day of May in every year, a fair copy of the assessor's book, verified by his affidavit, and sets out the form of the affidavit.

In the case of State ex rel. v. Timbrook, 240 Mo. 226, the Supreme Court held that the requirement of such section regarding the verification by affidavit of the assessor's book is merely directory, and that the failure of the assessor to verify by affidavit such book does not invalidate assessments in such book. The court said, l. c. 238-239:

"Section 11521, Revised Statutes 1909, provides: 'No irregularity in the assessment roll, no omission from the same, nor mere irregularity of any kind in any of the proceedings, shall invalidate any such proceeding.'

"The same legislative power which provided for the assessor's affidavit, has also provided that the 'omission' of such matters shall not invalidate the tax; in other words such provision for an affidavit is directory.

"The mere absence of the affidavit to the assessor's book should not in this case invalidate the tax sued for. By section 11344 the assessor is required, on entering office, to take an oath in substance the same as that required in the affidavit to the assessor's book, and the presumption is that he took that oath. Section 11403 requires the assessor and the other members of the board of equalization to take an oath 'fairly and impartially to equalize the valuation of all the taxable property in such county;' and it is presumed they took that oath in this case.

"The board of equalization had power to raise or lower the valuation of all the property on that book on a percentage basis. (Black v. McGonigle, 103 Mo. 193.) It could add to the book property which the assessor had omitted, and drop from it property which he had placed thereon, and could raise or lower the value of any item of property on that

book. Any citizen had the right to be heard on any such questions. The functions of this board and the time of their meeting are generally known to the citizens; and it is a matter of common knowledge that many people attend the sessions of the board.

"The record in this case shows the action of the board by which the assessment of the county was finally completed and equalized. After such reconsideration of the assessor's book by the board of which the assessor was himself a member, surely the absence of the affidavit from the assessor's book as returned to the county court should not invalidate the assessment, especially in view of the curative statutes."

In view of the authority contained in the above-quoted case, we believe it unnecessary to rule as to whether or not the prior assessor or the present assessor has any power to verify the assessor's book.

CONCLUSION

It is the opinion of this department that where a county assessor resigns his office before verifying by affidavit the assessor's book, and the successor assessor does not qualify and take office until the month of June, it is unnecessary to have a verification by affidavit of the assessor's book.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

J.B.

CBB:HR