

Opinion No. 30

COUNTIES; Reclassification of property—COUNTY COMMISSIONERS; Duties; reclassification of property—LAND CLASSIFICATION; County Commissioners; duty to reclassify—STATE BOARD OF EQUALIZATION; Reclassification of property—Sections 16-1027, 19-102, 49-134, and 84-429.7 to 84-429.12, Revised Codes of Montana, 1947

- Held:**
- 1. Boards of County Commissioners have the responsibility of reclassifying property under the supervision of the State Board of Equalization and no other state or county office has any responsibility to reclassify property by the provisions of Chapter 191, Laws of 1957.**
 - 2. The enactment of Chapter 191, Laws of 1957 did not create a new county office.**
 - 3. After July 1, 1962, the Boards of County Commissioners shall continue to reclassify property by the method of classification and appraisal supplied by the State Board of Equalization, pursuant to the provisions of Chapter 191, Laws of 1957.**

October 5, 1959

Mr. W. J. Winters, Chairman
State Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Winters:

You have requested my opinion on the following three questions relative to Chapter 191, Laws of 1957. (Sections 84-429.7 through 84-429.12, RCM, 1947.)

1. Which county and state offices under Chapter 191, Laws of 1957 have the responsibility of reclassifying property?
2. Did the Legislative Assembly by the enactment of said Act create a new county office?
3. After July 1, 1962, which county and state offices will have the task of reclassifying property?

Before considering the subject it may be beneficial to note the history of this Act. Its original enactment was as Chapter 198, Laws of 1955. The constitutionality of that Act was tested in the case of *Schladweiler v. State Board of Equalization*, 131 Mont. 13, 306 Pac. (2d) 673. Counsel presented the following arguments in that case, as set forth on page six of the Appellant's Brief:

"As the defendant's see the case, the following seven questions are raised by the complaint:

- I. Does the Act constitute a forbidden delegation of legislative authority to the executive department?
- II. Does the Act take from the County Assessors constitutional privileges and duties?
- III. Does the failure of the Act to require periodic reclassifications and re-evaluation make it void?
- IV. Does the Act require the County Boards of Equalization to exceed their constitutional authority?
- V. Is the Act so ambiguous as to make it void?
- VI. May the plaintiff raise the questions of constitutionality of the tax levy?
- VII. Is the financing provision in the Act valid?"

Respondent conceded that these seven questions were the issues of the case, as this statement is made on page two of Respondent's Brief:

"The questions involved are purely questions of law and are as set forth by the appellants at pages 6 and 7 of appellants' brief, consequently, we shall proceed directly to our argument."
As to these seven arguments the Supreme Court said at page 14:

"The constitutionality of the act is questioned. The act is questioned upon several grounds. **We deem only one of them to be meritorious.** The attack upon the act requires the answering of the question: Can a tax for a public purpose be levied only upon real estate, thereby exempting personal property?" (Emphasis added.)

The court held that such a tax could not constitutionally be levied, and rejected the act on this ground. The Legislature then passed the present act, Chapter 191, Laws of 1957, after amending the objectionable

section to provide for a tax upon all property in the county subject to taxation. In every other particular the two acts are nearly identical. Therefore, the constitutionality of the present act is clear, and has been settled by the Supreme Court.

1. WHICH COUNTY AND STATE OFFICES UNDER CHAPTER 191, LAWS OF 1957, HAVE THE RESPONSIBILITY OF RECLASSIFYING PROPERTY?

The pertinent sections of the act which provide for the duties of the various state and county offices in the reclassifying of property are:

"84-429.7, RCM, 1947. Classification and Appraisal—Duties of County Commissioners. It is hereby made the duty of the **board of county commissioners** of the several counties to accomplish, in such manner as the **state board of equalization** may direct, the following:

a. The classification of all taxable lands . . .

"84-429.8, RCM, 1947. Classification and Appraisal Fund—Tax Levy For . . . All costs and expenses incurred by the **board of county commissioners** for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by said board; . . .

"84-429.9, RCM, 1947. Assessments to be Made On Classification and Appraisal. The **county assessor** must base the assessments of all lands, city and town lots, and all improvements on the classification and appraisal as made by the **board of county commissioners**.

"84-429.11, RCM, 1947. Notice of Classification and Appraisal to Owners—Appeals . . . If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the **board of county commissioners** he shall have the right to appeal to the **state board of equalization** whose findings shall be final subject to the right of review in the proper court or courts.

"84-429.12, RCM, 1947. Classification and Appraisal—General and Uniform Methods. It is hereby made the duty of the **state board of equalization** to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes . . .
2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.
4. For a general and uniform method of appraising timber lands." (All emphasis added)

In the interpretation of statutes we are advised that: "Interpretation must be reasonable," Section 49-134, RCM, 1947; "Words and phrases used in the codes or other statutes of Montana are construed according to the context and approved usage of the language . . ." Section 19-102, RCM, 1947. The act mentions only three county or state offices and provides that: one of them, the board of county commissioners, shall do the reclassifying; one of them, the state board of equalization, shall direct and supervise the reclassification; the third office mentioned, the county assessor, shall use the reclassification as the basis for assessment.

It is therefore my opinion that: the county commissioners have the responsibility of reclassifying property; the state board of equalization has the responsibility for supervising and implementing the provisions of the act; no other state or county office has any responsibility to reclassify property by the provisions of this act.

2. DID THE LEGISLATIVE ASSEMBLY BY THE ENACTMENT OF SAID ACT CREATE A NEW COUNTY OFFICE?

Our Supreme Court in the case of *State ex rel. Blair v. Kuhur*, 86 Mont. 377, 382, 283 Pac. 758, stated the general rule in reference to county powers:

"The fundamental rule is recognized that counties are subdivisions of the state of purely statutory creation, and when they assume to exercise a power, authority therefor must be found in the statute conferring power upon them, or necessarily implied in order to carry out an express power."

The language employed in the act appears to be plain and without any ambiguity; therefore, it must be construed and applied in accordance with its apparent meaning. Neither the purpose of the act, or anything contained in it, indicates a legislative intent to create a new county office. It is self-evident that the Legislature never intended to expressly create a new county office by this legislation.

The boards of county commissioners have statutory authority to perform the duties entrusted to them by the passage of this act, and, since no specific mode is authorized, they may use their discretion as to the exact method of performance. Section 16-1027, RCM, 1947, provides:

"Necessary Acts. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To perform all other acts and things re-

quired by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government."

Even before the enactment of this statute our Supreme Court had repeatedly held to the same effect. *State ex rel. Blair v. Kuhur*, *supra*, at page 382:

"And whenever a power is conferred upon the board of county commissioners, but the mode in which the authority is to be exercised is not indicated, the board in its discretion may select any appropriate mode or course of procedure. (*Fisher v. Stillwater County*, 81 Mont. 31, 261 Pac. 607; *Arnold v. Custer County*, 83 Mont. 130, 269 Pac. 396)."

The enactment of said act conferred a duty upon the boards of county commissioners to reclassify all of the taxable real property within their respective counties. The Legislature did not expressly or impliedly authorize the county commissioners to create a new county office to expedite the provisions of this act. The county commissioners have the necessary authority to select any appropriate mode or course of procedure whereby the provisions of this act will be executed by their office.

Therefore, it is my opinion that the enactment of said act did not create a new county office.

3. AFTER JULY 1, 1962, WHICH COUNTY AND STATE OFFICES WILL HAVE THE TASK OF RECLASSIFYING PROPERTY?

Section 84-429.7, RCM, 1947, provides in part:

"Classification and Appraisal—Duties of County Commissioners . . . **After compliance with the other provisions of this act**, it shall be the duty of the board of county commissioners to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein." (Emphasis added.)

One of the other provisions of the act is set forth in Section 84-429.10, RCM, 1947, which provides that the classification and appraisal shall be completed not later than July 1, 1962. The intention of the Legislature is clear: the county commissioners are to reclassify and appraise all taxable lands within their respective counties; the reclassification and appraisal is to be completed by July 1, 1962; after that date the county commissioners are to maintain current the classification and appraisal. The duty of the state board of equalization, the only other state office mentioned in the act, is to provide a general and uniform method of classifying and appraising the property to the local boards of county commissioners. The boards of county commissioners must use the method of classification and appraisal supplied by the state board of equalization, but the mode in which the work is to be

accomplished is left to their discretion. The language in the act is clear and it must be construed and applied in accordance with its apparent meaning.

Therefore it is my opinion that after July 1, 1962, the boards of county commissioners shall continue to have the task of reclassifying property by the method of classification and appraisal which is supplied to them by the state board of equalization.

Very truly yours,
FORREST H. ANDERSON
Attorney General