

**Counties, Classification of—County Officers, Salaries
Dependent on Classification of County—Classification of
Counties—County Commissioners, Duty to Reclassify County.**

The classification of a county is based upon the percentage of the full and true value of the taxable property of a county, and its classification is not changed without of resolution of the board of county commissioners to that effect.

November 18, 1920.

Mr. N. A. Rotering,
County Attorney,
Butte, Montana.

Dear Sir:

I am in receipt of your letter enclosing copy of letter received by you from Board of County Commissioners of Silver Bow County with reference to the classification of such county, and the salaries of county officers for the terms commencing with the first Monday in January, 1921.

As I understand the situation Silver Bow County has been for many years a county of the first class. The Extraordinary Session of 1919 amended Section 2973, Revised Codes, providing for the classification of counties, and under such section as amended the percentage of the full and true value which is used as the basis for computing taxes is made the basis for classification, such act, however, providing that there shall be no re-classification of counties until after March 10, 1921, except counties from which territory has been taken by the creation of new counties since January 1, 1919. This year the percentage of the full and true value of property in Silver Bow County used as a basis for computing taxes was less than \$50,000,000, altho more than \$30,000,000, consequently should the county be re-classified using the 1920 assessment as the basis it will become a county of the second class.

A county does not change its classification automatically, but requires that the proper action be taken by the board of county commissioners before its classification is changed. Section 2975 requires the board of county commissioners, at the regular session in September of each even numbered year, to make an order designating the class to which the county belongs, as determined by the assessed valuation for such year, but that such classification shall not change the government

of the county then in existence until the first Monday in January next succeeding. Consequently Silver Bow County will remain in its present class until the board of county commissioners has made the proper order designating its class, and none of its territory having been taken since January 1, 1919, for the creation of a new county, it is clear that such order cannot be made until after March 10, 1921, and in the mean time the officers elected in November, 1920, will have entered upon the discharge of their duties.

As I understand it the provisions in Section 2973, as amended, that there shall be re-classification of counties until after March 10, 1921, is not a mandatory provision requiring re-classification on March 10, 1921, or immediately thereafter, but it is a prohibitory provision, prohibiting re-classification until after March 10, 1921, and does not amend or attempt to amend any provision in Section 2975 which requires re-classification to be made by the board of county commissioners at the regular September meeting in each even numbered year. It is, therefore, my opinion that the board of county commissioners can take no action towards re-classifying Silver Bow County until its regular meeting in September, 1922, and that until such action is taken at such meeting Silver Bow County will continue to be a county of the first class.

But even though the board of county commissioners could re-classify the county immediately after March 10, 1921, and did do so, this could not affect the salaries of the elective officers of such county, except possibly the County Auditor. All elective county officers, except the County Auditor, are constitutional officers, that is, their offices, and the terms, are created and fixed by the constitution, and Silver Bow County being a county of the first class when such officers were elected, and when they enter upon the discharge of their duties on the first Monday in January, 1921, they are entitled to the salaries then allowed officers of counties of the first class, and such salaries cannot be decreased or diminished during their terms of office. (Art. 5 Const. Sec. 31.)

Respectfully,

S. C. FORD,

Attorney General.