

**Raising and Lowering the Classification of Lands—  
Powers of County Board of Equalization—Powers of the  
Board of County Commissioners.**

The Board of County Commissioners, sitting as a Board of Equalization, may reclassify any land that has an incorrect classification, either upon its own initiative or upon protest by the land owner and appropriate proceedings for hearing and investigating the same.

B. K. O'Grady, Esq.,  
Clerk of the Board of County Commissioners,  
Plentywood, Montana.

My dear Mr. O'Grady:

You have requested the opinion of this office on the following question:

"Has the Board of Equalization or the Board of County Commissioners authority at any time to raise or lower the classification of lands approved of by the Board of County Commissioners in 1920?"

The classification of land was originally provided for by Chapter 89, Laws of 1919, which Act was held unconstitutional by the Supreme Court of Montana, for the reason that it provides for a tax levy upon real estate only to create a fund for classification purposes.

*Stoner v. Timmons*, 59 Mont 158, 196 Pac. 519.

The 17th Legislative Assembly thereupon enacted Chapter 239 to cure the defect existing in said Chapter 89.

In both Acts we find the following provision:

"Section 8. It shall be the duty of the Board of County Commissioners to cause to be mailed by registered mail, return card requested to each owner a notice of the classification of the land owned by him. If the owner of any land is dissatisfied with the classification of his land, the Board of County Commissioners shall make such investigation as they deem necessary to determine the true and correct classification of such land and when so determined, the same shall be classified in the manner ordered by the Board of Commissioners."

Under this section, the Commissioners are required to notify land owners and allow them to appear and object to any classification made. If the land owner, having been so notified, fails to appear and ask for a correction, it is to be assumed that the classification is satisfactory to him.

However, the ultimate purpose of the statute and the result to be attained is a correct classification of the land. Any incorrect classification must result in unequal burdens of taxation, and consequently in injustice. The statute above quoted certainly did not intend to lay down so harsh and arbitrary a rule as that a classification once made, and not immediately protested by the farmer owning the property, should stand perpetually no matter how great the error in assessment resulting or the inequality and injustice in the burden of taxes borne by him. Suppose that the registered notice referred to in the section quoted were delivered to a farmer in some distant State, where, because of difficulties from drought or other causes, he had gone to procure employment. He could not reasonably be required to leave his work, return to Montana, and be present at the first meeting of the Board of Equalization under penalty of having his property perpetually wrongly assessed. Moreover, from the mere notice, and until perhaps after extended inquiry involving a considerable time, a farmer could not know whether the classification placed upon his property corresponded to the classification of similar property elsewhere and whether the same was correct.

The statute provides for investigation and reclassification upon protest by the owner, and while it might seem from the fact that this provision follows immediately the provision for sending out notices of classification, that it was intended that protest must be made at once by the land owner, this conclusion does not necessarily follow, and that construction will therefore be placed upon the section that will, without apparently harming any one, doing violence to the statute, or interfering with its administration, permit the fairest result to be attained, namely, a correct and equitable classification and assessment.

It was not the intention of the Legislature to require a classification to be made once for all time. The class of land may change from year to year. Land that was stump land may be cleared and become agricultural land. Non-irrigated land may be brought under water, and other changes may take place such as to render the classification made in one year valueless the next. In such cases, it is the duty of the Assessor to reclassify the land affected, and if he fails to do so, the County Commissioners, sitting as a Board of Equalization, may do so. (See Vol. 8, Opinions Attorney General, p. 153.)

It is therefore my opinion that at any meeting of the Board of County Commissioners, sitting as a Board of Equalization, it may reclassify any land that has an incorrect classification, either upon its own initiative or upon protest by the land owner and appropriate proceedings for hearing and investigating the same.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.