

**Taxation—Computation of the Percentages of Assessed Valuation—Duty of Assessor—Duty of County Clerk and Recorder.**

The duty of computing the percentage of the assessed valuation to be used for the purpose of taxation, as provided in Chapter 51 of the Laws of 1919, devolves upon the County Clerk and Recorder and not upon the County Assessor.

T. F. Schofield, Esq.,  
Chairman, Board of County Commissioners,  
Baker, Montana.

My dear Mr. Schofield:

You have inquired whether it is the duty of the County Assessor or of the County Clerk and Recorder to compute the percentage of the assessed valuation to be used for the purpose of taxation, as provided in Chapter 51 of the Laws of 1919.

The duties of the Assessor in making the assessment of property are set out in Section 2543 et. seq. of the Revised Codes of 1907. Section 2543 states explicitly what the assessment shall consist of, and Section 2544 provides a form of assessment book. Section 2547 provides that when the work outlined in the preceding sections has been completed by the Assessor he shall deliver the assessment book to the County Clerk. With the delivery of the assessment book to the County Clerk the Assessor's duties in that regard are completed. His duties are defined by the foregoing sections, which were in force long before the enactment of Chapter 51, *supra*.

In the case of *Hilger v. Moore*, 56 Mont. 146, 165, the Supreme Court, in considering Chapter 51, *supra*, used the following language:

"When our Constitution was prepared and ratified, the term 'assessment' and the term 'taxation' each had a definite, well-understood meaning. Assessment was the process by which persons subject to taxation were listed, their property described, and its value ascertained and stated. Taxation consisted in determining the rate of the levy and imposing it. Speaking generally, the assessment was made by the assessor, subject to review by the board of equalization. The rate of taxation was fixed and imposed by the legislature for state purposes,

by the county commissioners for county purposes, by the city council for city purposes, etc. This has been the history of our revenue legislation from the time Montana was organized as a territory, and the framers of our Constitution understood these words and used them accordingly. It may be conceded that they apparently chose to employ inept language, rather than multiply words, for the use of 'levy' and 'rate,' as applied to assessment, is hardly appropriate; but when we consider the entire first sentence of section 1 with other provisions in *pari materia*, the meaning is reasonably clear: The mode of assessment—the rule for ascertaining values—must be uniform, to the end that a just valuation of all taxable property may be secured. This is the rule—the exceptions will be noticed later.

"The Act in question has nothing whatever to do with either the assessment of property or the determination of the rate of the tax levy. It is not directed to the assessor. His duties are defined by the statutes in force when this measure was enacted."

In *State ex rel. Galles v. Board of County Commissioners*, 56 Mont. 387, 185 Pac. 456, the Supreme Court used the following language:

"Chapter 51, Laws of 1919, has nothing whatever to do with the assessment of property or the determination of the assessed valuation. It deals only with the imposition of taxes after the assessment-roll is completed and in the hands of the county clerk. Its provisions are directed to the clerk, and the extension of the taxes by him involves only a matter of mathematical calculation—a mere ministerial duty. (*Hilger v. Moore*, ante, 146, 182 Pac. 477.)"

It is therefore my opinion that the duty of computing the percentage of the assessed valuation to be used for the purpose of taxation, as provided in Chapter 51 of the Laws of 1919, devolves upon the County Clerk and Recorder.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.