Limitation of Tax Levy—Whether Based Upon the Assessed Valuation or Upon Valuation for Taxation Purposes.

The 1 per cent limitation that may be levied on the taxable property in a year under Chapter 27 of the Laws of 1919 should be calculated upon the full cash value or assessed valuation, and not upon the percentages of that value provided by Chapter 51 of the Laws of 1919.

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My dear Mr. Foss:

You have inquired whether, under the provisions of Chapter 27 of the Laws of 1917 fixing the limit of taxation for cities of less than 35,000 inhabitants at "one per centum on the assessed value of the taxable property of the city," the one per centum is to be calculated upon the assessed valuation as determined by the Assessor, or is it to be calculated upon the percentage of the true and full value of the property to be used for the purpose of taxation as provided by Chapter 51 of the Laws of 1919.

The statutes relating to the assessment of property and ascertaining the value thereof are Section 2543 et seq. of the Revised Codes of 1907. Section 2502 of the Revised Codes provides that all taxable property shall be assessed at its full cash value. The law of these sections is unchanged and unaffected by Chapter 51 of the Laws of 1919.

Hilger v. Moore, 56 Mont. 146;
State ex rel. Galles v. Board of Co. Commrs, 56 Mont. 387.

Section 2 of Chapter 51 of the Laws of 1919, supra, reads, in part, as follows:

> "As a basis for the imposition of taxes upon the different classes of property above specified, a percentage of the true and full value of the property of each class shall be taken as follows:
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> "(a) Class One: 100 per cent of its full and true value.
> "(b) Class Two: 20 per cent of its full and true value.
> "(e) Class Five: 7 per cent of its full and true value."

In Hilger v. Moore, 56 Mont. 146, the Supreme Court, referring to Chapter 51 of the Laws of 1919, 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, supra, the court held that the "full cash value" and the "value of taxable property" and the "assessed valuation" mean one and the same thing, and that by these are not meant the results of computing the percentages mentioned in Chapter 51. The opinion in that case is, in part, as follows:

"Section 5, Article XIII, of our Constitution, so far as involved here, provides: 'No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the (value of the) taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.'

"At the time the Constitution was drafted, the statute provided that all taxable property should be assessed at its full cash value (Sec. 1673, Fifth Div. Comp. Stats. 1887), and the same statute has been in force continuously since (Sec. 2502, Rev. Codes). In view of this declaration of the public policy of the state, the language of the Constitution above must be construed to mean that the limit of county indebtedness is five per cent of the value of the taxable property as that value is disclosed by the assessment-roll; and since the only value which appears on the assessment-roll is the value fixed by the county assessor as equalized by the county and state boards of equalization—that is, the full cash value—the expressions 'value of taxable property' and 'assessed valuation' mean the same thing.

"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.)

"Under the provisions of the Constitution above, the limit of indebtedness is computed upon the assessed valuation as disclosed by the last assessment-roll, and not upon the percentage of value upon which taxes are computed. The language is too plain to admit of doubt or to require the citation of authorities to support the conclusion; but, under like constitutional provisions, the same rule of construction has been applied in other states. (Halsey & Co. v. Belle Plaine, 128 Iowa, 467, 104 N. W. 494; Hansen v. Hoquiam, 95 Wash. 132, 163 Pac. 391.)"

It is apparent that it could not have been the intention of the Legislature in enacting Chapter 27 of the Laws of 1917, which was prior to Chapter 51 of the Laws of 1919 and an amendment of Section 3342 of the Codes of 1907, carried forward from the Codes of 1895, to make the one per centum applicable to the percentages of the true and full value provided by Chapter 51. Section 2 of Chapter 51 above quoted, by the words "a percentage of the true and full value," inferentially denies that the percentages therein provided constitute "the assessed value of the taxable property." It specifically provides for taking *part* of the value for certain purposes. And in order to conclude that Chapter 51 fixes the value of taxable property, it is necessary to acquiesce in the proposition that 7 per cent of the amount of money on deposit in a bank is the full value of such amount, this being the percentage of money on deposit provided by said chapter to be taken as a basis for the imposition of taxes.

In the Galles Case, supra, the language, "Chapter 51, Laws of 1919, has nothing whatever to do with the assessment of property or the determination of the assessed valuation," in conjunction with the portion of Section 2 quoted above, is sufficient authority that by the term "value of taxable property" used in Chapter 27, supra, are not meant the various percentages provided for in said Section 2.

It is, therefore, my opinion that the one per centum on the assessed value of the taxable property that may be levied in a year under Chapter 27 of the Laws of 1919 should be levied upon the full cash value or assessed valuation, and not upon the percentages of that value provided by Chapter 51 of the Laws of 1919.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.