

**Counties—Reclassification—Time When to be Made—  
Commissioners—Power to Make Order of Reclassification.**

A Board of County Commissioners, having failed to reclassify the County at the regular meeting in September, as provided in Section 2975 Revised Codes, may correct the error, and in good faith, reclassify at a meeting held in November following.

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County Attorney,  
Plentywood, Montana.

My dear Mr. Erickson:

I have your letter relative to the reclassification of Sheridan County, by a resolution of the Board of County Commissioners, adopted in November, 1920, to take effect January 3, 1921.

The law fixing the time for reclassification of counties is Section 2975, Revised Codes of 1907. It provides that the several Boards of County Commissioners *must*, at their regular meeting in September, in each even-numbered year, make an order designating to what class the county belongs, determined by the assessed valuation of the county for the year in which the reclassification is made.

Section 2973, Revised Codes, as amended by Chapter 24, Extraordinary Session Laws of the 16th Legislative Assembly, provides that this reclassification should be made "according to that percentage of the true and full valuation of the property therein upon which the tax

levy is made, \* \* \*. Provided, however, that there shall be no reclassification of counties until after March 10, 1921, except in counties from which territory has been taken by the creation of new counties since January 1, 1919."

Sheridan County, being within the above proviso, should have been reclassified at the regular session of the Board of County Commissioners, at the September, 1920, meeting. From your letter, it appears that the Board failed to act at that meeting, but no reason is shown for such failure.

The question, therefore, is this: Can the Board of County Commissioners, having failed to perform a required act at the proper meeting, cure the failure by performing the act at a subsequent meeting? In other words, can a Board of County Commissioners make a *nunc pro tunc* order?

A Board of County Commissioners is one of limited power. It can only exercise such powers as are conferred by law, or are necessarily implied.

State ex rel. Gillett v. Cronin, 41 Mont. 293, 109 Pac. 144.

See, also:

Ainsworth v. McKay, 55 Mont. 270, 175 Pac. 887.

Had the Board classified Sheridan County at the September meeting as required by Section 2975, *supra*, and then at a later meeting attempted to rescind or change such classification, there is, I think, no question that such action would have been illegal. (State ex rel. Hauswald v. Ellis, 52 Mont. 505.) Also, had they made no reclassification at the September meeting as required by law, mandamus would lie to compel them to reclassify. The law is mandatory relative to this reclassification, not directory. Nothing is left to the discretion of the Board of County Commissioners. The statute says they *must* reclassify at the September meeting, and if they fail to perform that duty, certainly the courts would compel them to act.

Section 7214, Rev. Codes 1907;

State ex rel. Furnish v. Mullendore, 53 Mont. 109;

State ex rel. Arthurs v. Board of County Commissioners, 44 Mont. 51;

State ex rel. Woodward v. Moulton, 57 Mont. 414.

If the Board could be compelled to correct the failure, it is equally certain that it could, of its own motion and in good faith, correct it, especially where it was done prior to the time when the reclassification could take effect, to wit, the first Monday in January next succeeding. (State v. Mullendore, *supra*, at p. 116.)

It is, therefore, my opinion that the Board of County Commissioners had full power to reclassify Sheridan County at its regular November meeting, it having failed to do so at the regular September meeting, as it was required by law to do.

As to whether this power would still exist after the first Monday in January next succeeding, I am expressing no opinion, that question not being raised and not entering into this discussion.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.