

County Board of Equalization—Authority to Determine Whether a Ditch Assessment, Fixed by the State Board, is Illegal—Power to Refund Taxes.

The Board of County Commissioners, acting as the County Board of Equalization, has no power to change or correct taxes fixed by the State Board of Equalization.

The Board of County Commissioners has no authority to refund any portion of taxes assessed by the State Board of Equalization.

William L. Bullock, Esq.,
County Attorney,
Conrad, Montana.

My dear Mr. Bullock:

I have your letter in regard to tax matters in connection with the Brady Irrigation Ditch Company, and inquiring whether the County Commissioners have authority to return any portion of the taxes collected for the year 1920 or to determine whether any portion of that tax was illegal, in view of the fact that the assessed valuation was fixed by the State Board of Equalization.

Section 2669, to which you refer, has reference to taxes erroneously or illegally collected only. The taxes collected from the company were collected upon an assessment fixed by the State Board of Equalization after inquiry had been made by the Board, no reduction having been applied for by the company, and the tax having been paid without protest. Under this state of facts, the tax was not erroneously or illegally collected. If there was any error it was in the amount of the assessment, and the statute makes full provision for a method of correcting any error in the assessment through application for reduction to the State Board.

There is no provision in the statute giving any authority to the Board of County Commissioners to change or correct taxes fixed by the State Board of Equalization. Furthermore, Chapter 49 of the

Laws of 1919 specifically gives to the State Board of Equalization the authority to assess ditches extending into more than one county, thus excluding the County Commissioners from any jurisdiction over this assessment. A refund by the County Commissioners of a tax thus assessed and later collected would be, in effect, a review and setting aside of the assessment made by the State Board of Equalization.

It is, therefore, my opinion that the County Commissioners have no authority to return any portion of a tax assessed by the State Board of Equalization.

The County Commissioners having no authority to deal with or refund the tax in question, your additional question as to what funds such refund should be taken from requires no answer.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.