

Land Classification—Validity of Warrants Issued in Payment of.

Sections 2025 to 2028, inclusive, of the Revised Codes of 1921 construed to furnish authority for the issuance of classification warrants in payment for work or labor performed in the classification of lands, whether the work or labor was performed under the provisions of Chapter 89 of the Laws of 1919, or under Chapter 239 of the Laws of 1921.

Lincoln Working, Esq.,
County Attorney,
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My dear Mr. Working:

I have your letter in which you have requested this office for an opinion covering the statutory authority of a county to issue warrants in payment of land classification made under the provisions of Sections 2025, 2026, 2027, 2028 and 2031 of the Revised Codes of Montana of 1921.

In the case of *Stoner v. Timmons*, 59 Mont. 158, our Supreme Court had under consideration the constitutionality of Section 4 of Chapter 89 of the Laws of 1919, which Act was assailed upon several grounds, only one of which was considered meritorious by the court, and which involved the question whether a tax for a public purpose can be levied only upon real estate. This section provided in part, as follows:

"The Board of County Commissioners shall create and establish a fund to be known as the 'Classification Fund.' All warrants drawn in payment of work and labor performed, or in payment of services rendered under any contract, for the classification of land in any county, shall be drawn on the 'Classification Fund.'

"The Board of County Commissioners of each county shall levy annually a tax not to exceed one mill *upon the real property situate in said county*, which shall be levied and collected in the same manner as other taxes."

The court in this case said :

"While it may be conceded, as has heretofore been held by this court, that there may be a classification of property for taxation purposes, and that there may be a discrimination in favor of one class as against another (*Hilger v. Moore*, 56 Mont. 146, 182 Pac. 477), yet this case does not involve a mere classification, but, in effect, an exemption from taxation of all personal property."

The court further said:

"Section 1, Article XII, of the Constitution, provides that the legislature 'shall prescribe such regulations as shall secure a just valuation for taxation of *all property*. Section 16, Article XII, of the Constitution, provides that *all property* shall be assessed in the manner prescribed by law. Section 17, Article XII, Constitution, provides that: "The word property as used in this Article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.' Section 2, Article XII, provides what property may be exempt from taxation, in the following language: 'The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation.'

"Reading the Constitution as a whole. it appears that it was the intent of the framers of the Constitution that all property as described by section 17 should be taxed for public purposes, except such as is specifically exempted by section 2. Section 9, Article XII, Constitution, was expressly amend-

ed in 1910, whereby a special levy could be made upon livestock exclusively, for certain purposes, and without the amendment such levy could not be made. Any tax levied exclusively upon one class of property, necessarily in its effect works an exemption of all other classes, and is therefore void except in the case of special taxation of livestock as above mentioned."

And cited the case of Daly Bank & Trust Co. v. Board of Commissioners, 33 Mont. 101, 81 Pac. 950, in support of its contention. In conclusion the court said:

"As the Act in question exempts all personal property from taxation for the purpose of the Act, it is for this reason unconstitutional and void."

Subsequently the Legislature passed another Act (Chap. 230, Laws of 1921) validating all contracts entered into under the former Act, and in the case of State ex rel. Lockwood v. Tyler, 208 Pac. 1081, the court ordered the County Clerk to draw, sign and certify warrants in payment of relator's claim, which warrants were in payment for services performed in the classification of lands under the statute declared unconstitutional in the case of Stoner v. Timmons, supra, and later validated by the provisions of Section 2027, Revised Codes of 1921.

I am of the opinion, therefore, that the sections of the statute above referred to furnish authority for the issuance of classification warrants in payment for work or labor performed in the classification of lands, whether said work or labor was performed under the provisions of Section 4 of Chapter 89 of the Laws of 1919, or under Chapter 239 Laws of 1921.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.