

Opinion No. 155.**Taxation—Airplanes, Assessment of
—State Board of Equalization.**

HELD: Since there is no statute authorizing it, the State Board of Equalization may not assess airplanes in the first instance, whether used for pleasure or convenience, or engaged in intra-state or interstate commerce.

August 15, 1935.

State Board of Equalization
The Capitol

Your letter to us of July 25 is as follows:

“The National Parks Airways, engaged in interstate commerce between Salt Lake City, Utah, and Great Falls, has requested that this board assess the airplanes which we consider properly assignable to Montana.

“Will you kindly advise us:

1. Whether this board has the power to assess such airplanes.
2. If so, under what law should they be assessed?
3. How should the assessment be distributed, i. e., to counties, cities, school districts and/or other taxing subdivisions.”

The Constitution and laws of Montana define the powers of the State Board of Equalization.

Section 15, Article XII, of the constitution as amended in 1922, provides: “The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of the county assessors and county boards of equalization; change, increase, or decrease valuations made by county as-

sessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers and perform such other duties relating to taxation as may be prescribed by law."

Section 16 of the same Article provides: "All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts."

Section 8 of Chapter 3, Laws of 1923, authorizes the board "to annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis; provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures and improvements thereon, dams and powerhouses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the county assessor of the county wherein they are situated." The same section also authorizes the board "to exercise general supervision over the

administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose may visit each county in the state whenever deemed necessary, and may call, not to exceed one meeting of the county assessors each year at the capitol, for consultation and instruction, the expense of such attendance to be paid by the respective counties."

Section 11 of Chapter 3 provides that "whenever the board shall, in any year, discover that any taxable property of any person has not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the board may assess the same for such year or for such previous years."

Section 1 of Chapter 161, Laws of 1933, provides that the board shall assess the net proceeds of mines, royalties and royalty interests.

Section 3 of Chapter 26, Laws of 1935, provides that the board shall assess the properties of freight line companies within the state.

The board possesses other powers not necessary to recite here as they are without any particular pertinency.

It is the duty of the county assessor to assess, in the first instance, all property subject to assessment other than that which the board is required to assess under the provisions of Section 8 of Chapter 3, Laws of 1923; the provisions of Section 161, Laws of 1933, and the provisions of Section 3 of Chapter 26, Laws of 1935. (Sections 2001-2047, Revised Codes 1921, and amendments.)

The state board of equalization, as the Supreme Court has said, "is a special tribunal endowed with limited powers and charged with the performance of specific duties." (*State v. State Board of Equalization*, 56

Mont. 450.) It must find the authority for what it does in the constitution and laws. (State ex rel. Jones v. Erickson, 75 Mont. 429.)

Generally speaking, state officers, boards, commissions and departments have such powers as are expressly delegated to them by constitutional and statutory provisions, and such additional powers as are necessarily implied from those which are expressly granted. But executive and administrative officers, boards, departments and commissions have no powers beyond those granted by express provision or necessary implication. (59 C. J. 111.)

As there is no statute which authorizes the state board of equalization to assess airplanes in the first instance, whether used for pleasure or convenience, or engaged in intrastate or interstate commerce, the answer to the first question must be in the negative. The answer to the first question being what it is, answers to the second and third questions become unnecessary.