VOLUME NO. 41 OPINION NO. 31

COUNTY GOVERNMENT - Lack of jurisdiction in county tax appeal board for appeals of taxes on centrally assessed property;
STATE TAX APPEAL BOARD - Jurisdiction for appeals of taxes on centrally assessed property;
TAXATION AND REVENUE - Appeals of taxes on centrally assessed property;
MONTANA CODE ANNOTATED - Sections 15-1-403(2), 15-2-302(1)(a), 15-8-601(3)(c), 15-15-101 to 15-15-104, 15-23-101, 15-23-102(2)(c);
MONTANA LAWS OF 1977 - Chapter 98, section 2; chapter 155, section 2.

HELD: A county tax appeal board does not have jurisdiction to hear appeals of taxes on centrally assessed property.

30 October 1985

James C. Nelson
Glacier County Attorney
Glacier County Courthouse
Cut Bank MT 59427

Dear Mr. Nelson:

You have asked my opinion on the following question:

> Whether a county tax appeal board has jurisdiction over appeals of taxes on centrally assessed property.

Centrally assessed property is that property listed in section 15-23-101, MCA, which is assessed each year by the State Department of Revenue. By contrast, property which is not listed in section 15-23-101, MCA, is locally assessed property. The assessment procedure is set forth in chapter 8 of Title 15, MCA.

The proper jurisdiction for appeals from property tax assessments is the subject of several statutory sections. Sections 15-1-403(2) and 15-15-101 to 104, MCA, address the procedures to be followed for property tax appeals in general. These statutes provide that the county tax appeal board is the first jurisdictional level for considering protests by taxpayers to assessments, classifications, or appraisals. See also Department of Revenue v. Countryside Village, 40 St. Rptr. 1090, 1098-99, 667 P.2d 936, 942 (1983); Butte Country Club v. Department of Revenue, 186 Mont. 424, 432, 608 P.2d 111, 115 (1980).

Special procedures apply, however, to appeals from taxes on centrally assessed property. A direct appeal to the State Tax Appeal Board is authorized by sections 15-2-302(1)(a) and 15-23-102(2)(c), MCA. Section 15-2-302(1)(a), MCA, states:

> (1) A person may appeal to the state tax appeal board any action of the department of revenue involving:
>
> (a) property centrally assessed under chapter 23 of this title ....

Section 15-23-102(2), MCA, provides:

> (2)(a) After assessing property under 15-23-101, the department shall notify the owner and any purchaser under contract for deed of such property, in writing, of the assessed value it has determined.
>
> ....
>
> (c) Appeals from the final decision may be taken to the state tax appeal board.

Your inquiry concerns whether the use of the word "may" in these two statutes permits an appellant to appeal

either to the county tax appeal board or to the State Tax Appeal Board.

The above-quoted provisions were enacted in 1977 as chapter 155 (House Bill 19) and chapter 98 (House Bill 25), respectively. Both bills were part of a package intended to consolidate property tax procedures for centrally assessed property, as is reflected by the titles of the bills. A summary provided by the Legislative Council to members of the Senate Committee on Taxation for House Bill 25 states that section 2 (subsequently codified as section 15-23-102(2)(c), MCA) provides "a grievance procedure in the form of an assessment review conference at the department followed by a formal STAB [State Tax Appeal Board] hearing." The Legislative Council's summary of House Bill 19 notes:

> This [bill] represents an effort to rationalize administrative procedures in tax disputes upon the premises that (1) the department would have a single procedure for revising assessments and inserting omitted assessments, with opportunity for an informal conference at the department followed by a formal hearing before STAB, and (2) appeal procedure would be spelled out in cases going directly from department to STAB, i.e., not via the county tax appeal boards. These cases comprehend centralized utility and mine assessments, Class 7 determinations, and all nonproperty tax matters. [Emphasis added.]

The statements quoted above suggest that the 1977 legislation was intended to streamline the procedure for appeals of taxes on centrally assessed property by means of eliminating appeals to the local boards. Additional support for this interpretation of the 1977 legislation is also found in another section of House Bill 19 which changed the procedure for assessment revision when property either escaped assessment, was erroneously assessed, or was omitted from taxation. Section 15-8-601(3)(c), MCA, originally considered as section 4 of House Bill 19, states:

> Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference

> aggrieved by the action of the department may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed, may appeal to the county tax appeal board at its next meeting. [Emphasis added.]

The underlined language supports the conclusion that assessment by the Department of Revenue of centrally assessed property may only be appealed to the State Tax Appeal Board.

As already noted, the appeals procedure for property taxes in general as outlined in sections 15-15-101 to 104 and 15-1-403(2), MCA, provides for appeal to a local appeal board. Sections 15-23-102(2)(c) and 15-2-302(1)(a), MCA, which provide for direct appeal to the State Tax Appeal Board, apply only to certain types of property, including centrally assessed property, and thus are more specific in nature. A more specific statute will control over a more general statute. Dolan v. School District No. 10, 195 Mont. 340, 346, 636 P.2d 825, 828 (1981). Applying the ruling in this decision, the statutes that provide an appeals procedure for centrally assessed property prevail over the statutes for property tax appeals in general.

The argument that the use of the word "may" in sections 15-2-302(1)(a) and 15-23-102(2)(c), MCA, means that appeals may be taken either to the state or local appeal board is not persuasive. The ordinary import of the word "may" is a grant of discretion. See County of Chouteau v. City of Fort Benton, 181 Mont. 123, 128, 592 P.2d 504, 507 (1979). However, the discretion allowed by the use of the word "may," as used in the phrases "appeals may be taken to the state tax appeal board" and "a person may appeal to the state tax appeal board," relates to the taxpayer's initial decision as to whether to appeal a tax assessment. Once the taxpayer exercises that discretion and decides to appeal the taxes on centrally assessed property, I conclude that the appeal must be taken to the State Tax Appeal Board rather than to a local appeal board. My conclusion is based upon the existence of the two distinct statutory procedures for locally assessed property and centrally assessed property as discussed above.

THEREFORE, IT IS MY OPINION:

A county tax appeal board does not have jurisdiction to hear appeals of taxes on centrally assessed property.

Very truly yours,

MIKE GREELY
Attorney General