

Taxation—State Bounty Fund—Bounties, Taxation For—County Commissioners, Duties Of—Levy of Taxes.

Under Section 3076, Political Code, as amended laws 1905, p. 104, it is the duty of the board of county commissioners of each county to levy annually a special tax of four and one-half mills on the dollar for the benefit of the state bounty fund.

Where the board fails to make this levy, mandamus will lie against them to compel them to discharge this duty.

It is too late to resort to mandamus proceedings after the duplicate assessment book has been turned over to the county treasurer and he has published his notice as required by law and has collected taxes and issued receipts therefor on the class of property named in the law of 1905.

Helena, Montana, Nov. 7, 1905.

Hon. J. K. Toole, Governor of Montana, Helena, Montana.

Dear Sir:—I have the honor to acknowledge receipt of your communication of November 2, 1905, in which you state that your attention has been called to the fact that Dawson County has failed to comply with the law requiring a levy of four and one-half mills for the state bounty fund and in lieu thereof has levied three and one-half mills, and you also request that in investigation be made by this office as to what, if any, remedy is available to the State at this time.

Under the provisions of section 3076, Political Code, as amended by the act of March 1, 1905, laws 1905, p. 104, it is "the duty of the board of county commissioners of each county in this State at the time of the levy of the annual tax, to levy a special tax of four and one-half mills on the dollar, upon the assessed valuation of all cattle, horses, mules, asses, sheep and goats in their respective Counties, which tax shall be collected as other taxes on live property, and when so collected shall be paid into the State Bounty Fund," etc. Section 3825, Political Code, provides that "the board of county commissioners of each county must on the second Monday in August fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and must levy taxes upon the taxable property of the county." Section 3845, of the same code, provides that the "Duplicate Assessment Book" must be delivered to the county treasurer on or before the first Monday of October. Section 3860, of the same code, as amended laws 1899, p. 97, provides that the treasurer shall, within ten days after the receipt of the "Duplicate Assessment Book," publish a notice specifying that taxes will be delinquent, etc.

Under the various provisions of the statute and session laws this "Duplicate Assessment Book," (which is the warrant of the treasurer for the collection of taxes) has long since passed into the hands of the treasurer, (the tax receiver) and it is probable that much of the taxes on the class of property named in the laws of 1905 above referred to has already been collected and receipts issued therefor. Mandamus is the

proper remedy to compel the board of county commissioners to make the levy of taxes required to be made by them by law, but it is now quite apparent that it is impossible to have recourse to that remedy, for the warrant for the collection of taxes ("The Duplicate Assessment Book") has already passed beyond their jurisdiction.

In *Insurance Company v. Board of Supervisors*, 24 Barb. (N. Y.) 166, in considering a question of this character, the court said: "By section 27, same act, they must cause the corrected assessment roll with the warrant for the collection of the taxes assessed, to be delivered to the receiver of taxes on or before the first day of September thereafter. After the taxes are assessed, and warrants issued and delivered to the receiver of taxes, the supervisors have no further control over the assessment roll, and a mandamus to them to strike the relator's name from the roll, would be entirely nugatory. Their power is spent, and if the writ issued, and they were to obey it, it would not stay the receiver of taxes in the execution of the warrant. That a mandamus should not go under such circumstances, has been expressly held in two cases. (*The People v. Supervisors of Westchester*, 15 Barb. 607. *The People v. Supervisors of Green County*, 12 id. 217.)"

In High's *Extraordinary Legal Remedies*, section 140, it is said: "But mandamus will not go to a board of supervisors requiring them to make correction in the assessment of taxes for their county, after the assessments have been completed and warrants have been issued to the receiver of taxes and the matter has passed beyond the control of the supervisors, since the writ would be nugatory if issued, * * * ."

This same principle is announced in *Gaither v. Green, Tax Collector*, 40 La. Ann. Rep. 362. See also, *State v. Henderson, et al.*, 59 Md. 338; 2 *Cooley on Taxation*, 1350.

Section 2999, Penal Code, makes the wilful omission to perform any duty enjoined by law upon any public official a misdemeanor. It is probable that the only remedy the State now has is by action under this provision of the Penal Code or by resort to the official bonds of the county commissioners. (Section 4213, Political Code; Section 4333, Political Code, as amended 1899, p. 77; Section 4336, Political Code.)

Respectfully submitted,

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Attorney General.