

**Assessment. Assessor, Duties Of. County Commissioners,
Powers Of.**

Under Section 3732, and Division 25, Section 4320, Political Code, County Commissioners have authority to have the County Surveyor survey land in a town or city which has not been platted into lots and blocks, and to make out descriptions by metes and bounds of the different tracts or parcels.

It is the duty of the Assessor to procure correct descriptions of all real estate assessed by him and to assist him in so doing he should resort to and use the maps furnished by the board of county commissioners. When the board have furnished the assessor maps and correct descriptions by metes and bounds, their duty ceases, and it becomes the duty of the assessor to make copies of such maps and descriptions, if he deems it necessary, in order to procure correct descriptions of the land assessed by him.

The commissioners have no authority to employ persons to do the work that should be done by the assessor, and any contract made by them for such work is in excess of their authority and not a proper charge against the county.

Helena, Mont., Jan. 27th, 1906.

Board of County Commissioners, Silver Bow County, Butte, Montana.

Gentlemen:—Your letter of the 20th inst., requesting opinion of this office, received.

From the facts stated in your letter it appears that there are over two thousand parcels of real estate in Silver Bow County which are described and can only be described by metes and bounds; that in the past the greater part of such property was assessed under erroneous descriptions and, consequently, the taxes were lost to the county and state; that to remedy this evil the commissioners employed the County Surveyor to survey parcels of real property which are used for townsite purposes and not of record and make tracings of the same, and also employed Mr. John H. Simpson to make four copies showing the metes and bounds of such property, and such maps and correct description of the property were then turned over to the county assessor and used by him in making proper descriptions and, thereby, legal assessments of the property; that this procedure has been followed for the past three years; that this year a contract was let to make and correct all tracings up to date and make blue prints of the same for the use of the assessor, and also to furnish four typewritten copies of the correct descriptions of all property described by metes and bounds in this county; that said copies, giving correct descriptions by metes and bounds were made and delivered to the county commissioners according to such contract that the claim for said work was disallowed by the county auditor pursuant to an opinion of the county attorney, upon the ground that he could find no authority or statute for the allowance of such claim.

In connection with the above facts, the following questions were submitted upon which an opinion of this office is asked:

First:—"Have the commissioners power to have made surveys, maps, metes and bounds descriptions of all property in the County which are not described by legal subdivisions or lots or blocks?"

Second:—"Have the county commissioners power to have typewritten copies made of the last year's assessment roll, such copies being necessary, absolutely, for the use of Deputy Assessors while they are assessing property?"

Third:—"Have the county commissioners power to employ the County Surveyor to make such surveys as designated above?"

We will answer the first and third questions together. In order that legal assessments may be made upon which a valid sale of the property could be had in the event that the taxes were not paid, it is absolutely necessary that correct descriptions of the property assessed should be procured, and it is the duty of the assessor to procure correct descriptions of all property assessed by him. In order to assist the assessor in procuring correct descriptions, it is provided by Section 3732, Political Code, that "The board of county commissioners must provide maps for the use of the assessor, showing the private lands owned or claimed in the county, and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages, or school districts, may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the county general fund."

If real estate has not been surveyed under authority of the United States, or if townsite have not been platted, from which the surveyor may make such maps, there is no question but what the county commissioners would have authority under this section and also under Division 25 of Sec. 4230 of the Pol. Code to employ the county surveyor to make surveys in order to secure the necessary data from which he could prepare the maps required by said section to be furnished for the use of the assessor. And where the land must of necessity be described by metes and bounds, it would be necessary in connection with such map, and in order to make it of assistance and use to the assessor, to have the descriptions of each parcel written out by the surveyor or some other competent person, and attached to and made a part of the map. This map, together with the description of the metes and bounds of the property surveyed and designated by proper figures or letters on the map, should be filed away and become a permanent record of the county. The county surveyor may be employed to prepare such map and descriptions of the land, the survey of which is shown thereon. This map, and the descriptions by metes and bounds, having been prepared and filed as a record of the county, the questions then arises as to the duty of the county assessor in connection therewith, and this brings us down to question number two submitted by you.

Section 3701 of the Political Code provides that the assessor must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person or in his posses-

sion or under his control, which statement must be in writing, and, among other things, must show the exact description of all lands in parcels or subdivisions, etc.

Section 3703 provides that "the assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him within the appointed time to return the same to him properly filled in.

Section 3705 provides that in the event of a person refusing to give under oath, the statement provided for by Section 3701 and 3703, that the assessor may note the refusal on the assessment book and thereafter make an estimate of all of the property of such person.

Section 3727 provides that the assessor must, when directed so to do by the board of county commissioners, in a map book, make a plat of the various blocks within any incorporated city or town and mark thereon in each subdivision, the name of the person by whom it is owned. Under this section there can be no question but what the commissioners would have authority to direct the assessor to make a plat showing the various parcels or blocks of land within any incorporated city or town as shown by the map made by the surveyor describing such parcels by metes and bounds and mark on each parcel the subdivision of such map the name of the person to whom it is assessed.

Section 3789 provides that the board of county commissioners may direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number or quantity of property when a false or incomplete list has been rendered, and to make and enter a new assessment (at the same time cancelling the previous entries), when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax, provided that before such new assessment is made under the direction of the board, that notice is given as required by said section.

All of the sections cited above clearly show that it is the intention of the law that the assessor shall make valid assessments and that it is his duty to see that the descriptions of the land assessed are correct and that where he fails in this duty in the first instance, that the board of county commissioners, under the provisions of Section 3789, can direct him at the time of the meeting of the county board of equalization, to do his duty by making and entering new assessments, should they find that the original assessments made by him are so incomplete as to render doubtful the collection of the tax. The duty of the county assessor is not merely to receive the statement of property owned by a taxpayer, as mentioned in Section 3701, and thereafter to enter the same upon the assessment book without making any effort whatever to ascertain whether the description of the property as given by the taxpayer in such statement is correct or not. If the assessor's duty was merely to take the statement or list as given by the taxpayer, without making any investigation as to the correctness of the description of the property, then any taxpayer who wished to invalidate his assessment could make out his list, incorrectly describing the location of his property and thus avoid the payment of his taxes, unless the incorrect description was later discovered by the board of equalization and the correction made as provided by Section 3789.

As was said in *Falsenthal v. Johnson*, 104 Ills., p. 24:

"The assumption seems to be that the schedule returned by appellants was the assessment, and that the larger sum placed on the assessor's books was an alteration of the assessment. This is not true. The assessor, and not the taxpayer, makes the assessment. The latter is required to make and return the schedule to enable the assessor to perform the duty of assessing the value of the property. Until the assessor approves the schedule, or makes a new one and fixes the valuation of the property there is no assessment. The act is official, and must be performed by the assessor."

Welty on the law of assessments, Section 4, says:

The list, we have already seen, is not conclusive upon the assessor as to values. It is not conclusive upon him in any other respect, being required only in aid of the assessment, unless specially made so by statute. If he has knowledge of property overlooked or not included, or in case of real estate if the description be defective, he may both include the omitted property and assess, with proper description, the property defectively described in the list.

Where the records of the county show the correct descriptions of real estate, or where the county commissioners have had parcels of land surveyed and described by metes and bounds, and such survey and descriptions filed as a record of the county, it certainly becomes the duty of the assessor to resort to such records for the purpose of ascertaining the correct descriptions of the land assessed by him.

When the board of county commissioners have provided the maps required by Section 3732 and have had the land which has not been plotted, surveyed, and the descriptions thereof by metes and bounds written up and filed with such maps, their duty ceases and it then becomes the duty of the county assessor to take such maps and descriptions by metes and bounds and use them in connection with the assessment lists for the purpose of determining the correct description of all land assessed by him. If it is necessary, in order to procure these correct descriptions, for the assessor to have copies from the last year's assessment roll, or to make copies of the descriptions by metes and bounds theretofore prepared by the surveyor, he and his deputies must perform this work as a part of their official duty. From the time that the assessor turns over his book to the county clerk in August, until the first Monday of the following March, when he begins to make the assessment for the next year, he and his deputy have practically nothing to do other than to look up the records, make copies of the old assessment rolls, if necessary, and to procure such other data and information as will enable them to enter correct descriptions of all land assessed by them when they begin making assessments on and after the first Monday in March. It is a well established principle of law that where any particular duty is imposed upon a public official and his deputies, that no other public official or board of public officials, have authority to contract with, or to authorize any other person than such official and his deputies to perform such duties.

You are, therefore, advised that you have authority to employ the county surveyor to survey parcels of land which have not been surveyed

or platted into townsites, and to have proper descriptions thereof by metes and bounds filed with such map, and that the necessary expenses incurred in making such map and preparing such descriptions are a proper charge against the county, but, when you have done this, your authority ceases in such matter, for if you appoint any person to make copies of these descriptions, or to make copies of the old assessment roll, you are in effect, appointing a man to perform duties that the law requires the county assessor and his deputy to perform, and to that extent are appointing a special deputy assessor, which you have no authority to do, for the reason that the county assessor appoints his deputies and the number of such deputies is limited by Section 4602 as amended by the laws of 1905, page 165.

Therefore, any contract entered into by the board of county commissioners with any person to perform work which is part of the official duties of the county assessor and his duly appointed deputies, is in excess of the authority conferred upon the board of county commissioners upon not a proper charge against the county.

Respectfully submitted,

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Attorney General.