

Assessor—Power to Change or Alter Assessment Roll.

The assessor has no authority to change or alter the assessment roll after the assessment books have been turned over to the county clerk and recorder, nor after the Board of Equalization has adjourned and the county levy has been made, save and except that he may correct omissions, errors or defects in form with the consent of the County Attorney, where such errors or defects consist of purely clerical mistakes. He cannot increase or diminish valuation.

Helena, Mont., August 8, 1906.

Hon. J. F. Wagner, Chairman Board of County Commissioners, Helena, Montana.

Dear Sir:—Your letter of the 7th instant requesting an opinion of this office upon the following questions received:

1. "To what extent can a County Assessor change or alter the assessments after the Tax Rolls have been turned over to the County Clerk and Recorder?"
2. "Can a County Assessor alter an assessment after the Board of Equalization has adjourned, and the County levy has been made?"
3. Under Sec. 4010, Chapter 12, of the Political Code may a County Assessor reduce or cut out any portion of any assessment?"
4. How and when may errors, should any be found, in the assessment Rolls, be corrected and by whom?"

In answer to the first question you are advised that the County Assessor has no authority to change or alter any assessment after the assessment book has been turned over to the County Clerk and Recorder, except in the manner provided by sections 3788, 3789 and 4010 of the Political Code.

In answer to the second question, you are advised that the County Assessor cannot alter an assessment after the Board of Equalization has adjourned and the County levy has been made except in the manner provided by said section 4010.

In answer to the third question, you are advised that the Assessor, under said Section 4010, may correct "omissions, errors or defects in form," after having procured the consent of the County Attorney to make the same. The only corrections, however, which can be made by him, under authority of this section, are such as are purely clerical, such as mistakes in descriptions or mathematical mistakes. He cannot either reduce or increase valuations as he would thereby interfere with the province of the Board of Equalization.

In answer to the fourth question, you are advised that after the Assessment Book is made up and turned over to the County Clerk, that the only manner of adding property thereto, or of increasing or lowering the valuation of any property already assessed is that provided by sections 3780 to 3790. Section 3782 expressly provides that the Board has no authority to make a reduction upon property already assessed

by the Assessor, unless a written application is made to the Board during the time it is sitting as a board of Equalization, and the applicant has been examined upon oath as provided in Sec. 3783. In sections 3788, 3789, the Board of County Commissioners may order the Assessor to make new assessments where the property has altogether escaped assessment, or to add to the amount, number or quantity of property when a false or incomplete list has been rendered, but in such case such increase or additional assessment cannot be made until after the owner of the property, or person interested therein, has been notified in the manner provided in said section 3789. Such notice must be given at least ten days before the second Monday in August, for the reason that the Board of Equalization dies by operation of law on that date and has no authority after that date to order the Assessor to increase or add to the assessments.

See "Western Ranchers vs. Custer County, 72 Pac. p 659-662." 28 Montana 278.

"Montana Ore Purchasing Company vs. Maher, 81 Pac. p. 13."

Section 3723 of the Political Code provides that "any property discovered by the Assessor to have escaped assessment, may be assessed at any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed." This section simply means that during the time while the assessment book is in the hands of the Assessor, and during which he has the right to make assessments, that he may assess property which has escaped assessment, provided the same is under the control of the same owner who owned or controlled it at the time it should have been assessed. Therefore, if property escaped assessment this year and the next year the Assessor discovered the same at any time between the first Monday in March and the date he turns over the assessment book to the County Clerk, he would have a right to assess such property, but he would not have a right to assess such property under this section, between the second Monday in July, the date he turns the book over to the County Clerk, and the first Monday of the following March. After the Board of Equalization adjourns, there is no way by which it can order the increase or decrease of any person's assessment, nor has the assessor authority so to do. However, under section 3913 of the Political Code, whenever any taxes per centum and cost is paid more than once, or is erroneously or illegally collected, the Board of County Commissioners may order the County Treasurer to refund the same. For instance, if the same property is assessed to two different persons the one wrongly assessed may pay the taxes and then upon proper showing to the Board have them issue an order to the County Treasurer to refund such taxes. Or, if property which is exempt from taxation, under the Constitution or law, such as Churches, were taxed, it would be an erroneous or illegal tax and could be refunded. The section does not, however, give the Board authority to refund taxes upon the ground

that property assessed by the Assessor, or pursuant to its order while sitting as a Board of Equalization, was valued too high, for the reason that correction in the valuation of the property can only be made during the time the Commissioners are sitting as a Board of Equalization. In case that the Commissioners find, after they have adjourned as a Board of Equalization, that taxes have been paid upon the same property more than once, it is within their province to refund the erroneous tax| .

Respectfully Submitted,

ALBERT J. GALEN,

Attorney General.