

Assessment. Taxation. Equalization, of Taxes.

Under Section 2573, Revised Codes, the board of county commissioners may by rule prescribe the kind of notice, and the manner of giving the same, when contemplating a raise in an assessment. Sections 2572 and 2573 must be construed together, and the power of the board of county commissioners is limited by the duties prescribed in such sections.

Helena, Montana, December 10, 1909.

Hon. Julian A. Knight,
County Attorney,
Virginia City, Montana.

Dear Sir:

In reply to your telephonic request for an opinion on the following subject,

Has the board of county commissioners authority, under section 2573, revised codes, to raise an assessment without giving any notice of the time or place of the hearing, and without taking any testimony at such hearing?

you are advised that the board of county commissioners, under section 2573, has the power to prescribe by rule what notice shall be given property owners before an increase of any assessment contained in the assessment book can be made by them.

If your board of county commissioners has by rule prescribed the kind of notice, and the manner of giving the same, that rule is binding upon the board and must be followed in order to validate any increase of the figures shown in the assessment book. If the board of county commissioners has neglected to prescribe by rule the notice and manner of giving such notice, then it is my opinion that the provisions of section 2581, revised codes, govern the method of giving notice to property owners; that is, that the clerk, must notify the interested person by letter, deposited in the postoffice, post paid, and addressed to the person interested at least ten days before the date of the hearing.

The supreme court of the state of Montana, in *M. O. P. Co. v. Maher*, 32 Mont. p 487, uses the following language:

"As the board by its rule No. 7, prescribed that ten days' previous notice should be given before an increase in an assessment should be made, it becomes entirely immaterial whether this change be considered as one made by the board for the purpose of increasing the assessed valuation of this company's property, as provided by section 3781 above, or whether it be considered as a correction which the board ordered the assessor to make under the provisions of section 3789 above; for in either event ten days' previous notice to the taxpayer was essential to confer upon the board power to make the change in the one instance, or to order it done in the other."

The same case refers with approval to the opinion of this court in *Western Ranches v. Custer County*, 28 Mont. 278, and quotes from the case of the same title in 89 Fed. 577, citing several federal cases, all of which arose in the Pacific states.

The only question which could arise in this case would be in the event of a failure on the part of the board to prescribe by rule the required notice whether or not in that event any notice need be given, but article 1, chapter 5, part 3, title 12, revised codes, read in its entirety, certainly conveys the idea that notice must be given, and as stated above in the event of a failure to prescribe the required notice the board would be governed by section 2581 of that chapter.

Very truly yours,

ALBERT J. GALEN,

Attorney General.

ADDENDA: In connection with the above opinion your attention is called to section 2572, revised codes, which provides for meetings of the board of county commissioners sitting as a board of equalization:

and section 2573, of course, must be read in connection with the preceding section, and any increase or lowering of assessments contained in the assessment book so as to equalize the assessment of property contained therein is, of course, limited by the provisions of section 2572. The board of county commissioners have no authority to act under section 2573 except when sitting as a board of equalization during the time prescribed by law.

A. J. G.