

County Assessor, Right to Subpoena and Examine Person in Relation to Property Tax.

Assessor, Right to Require Owner to Produce Records to Ascertain Property Tax. Taxation, Right of Assessor to Summon Owner to Ascertain Property Subject to Assessment.

The county assessor is authorized to subpoena and examine any person owning real estate or personal property, or who has such property under his control in order to determine the value and amount of the property for the purpose of taxation. The assessor also has power to require such person to produce his books or other means of determining the property in his possession or under his control subject to assessment. The process for such purposes is issued and served by the assessor.

March 13, 1912.

Hon. John Hurly,
County Attorney,
Glasgow, Montana.

Dear Sir:

I am in receipt of your letter of March 4th requesting my official opinion upon the following questions:

1. Does Sec. 2514 of the Code give the assessor the right to call any employes of a railroad or other corporation to give testimony relative to any freight shipment or other transaction that will assist the assessor in discovering assessable property?
2. Can the assessor also require the agent or other employes to produce the records of his office to obtain this information?
3. If the assessor has such a right, who issues the summons?
4. Who serves the summons and what are the fees allowed the officers and witnesses?

Sec. 2514 of the Revised Codes provides that every assessor has power:

1. To require any person found within such assessor's county to make and subscribe an affidavit, giving his name and place of residence, and postoffice address.
- "2. To subpoena and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his county; and he may exercise this

power in any county where the person whom he desires to examine may be found. but has no power to require such persons to appear before him in any other county than in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the assessor, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the assessor in any police or justice's court."

It will be noticed that subdivision 2 of the above section gives the assessor the right to subpoena and examine any person in relation to any statement furnished to him. Under the provisions of Sec. 2511 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 possession or under his control at twelve o'clock M. on the first Monday in March, as provided in the section.

Under the provisions of Sec. 2512, the county commissioners must furnish the assessor with blank forms of statement; and Sec. 2513 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 out.

If Sec. 2514 is to be given any effect whatever, it authorizes the assessor to subpoena and examine any person owning real or personal property, or who has such property under his control, in order to determine the value and amount of the property for the purposes of taxation. This, of course, could not apply to an employee of a railroad or other corporation unless such person, under the provisions of Sec. 2511, is the president, secretary, cashier or managing agent.

If the assessor has power to subpoena and examine such person in relation to any statement furnished to him, it is my opinion that he would have the authority to require the person to produce his books or other means of determining the property in his possession or under his control subject to assessment. It is my opinion that the subpoena mentioned in Sec. 2514 is simply a notice issued and served by the assessor requiring the person to appear before him at a stated time and place, and furnish the information required by the sections above mentioned. The summons should be served by the assessor or one of his deputies, and they would not be entitled to any fee for such service as this is simply a means provided by statute for them to gain the necessary information in order for them to make proper assessment of property.

If any person required to appear before the assessor under the provisions of Sec. 2514 of the Revised Codes refuses to do so, it is the duty of the assessor to make complaint before a justice of the peace or police court and collect the fine prescribed by the section; also under the provisions of Sec. 2515 the assessor should note the refusal on the assessment book opposite the name of the person owning the property in his control subject to assessment, and make an

estimate of the value of the property, and the value so fixed by the assessor must not be reduced by the board of county commissioners.

If the above sections are to be given any meaning at all it appears to me that they must be construed as above set forth. The supreme court has never passed upon the constitutionality of these sections, and it is not my purpose to declare them ineffective unless they are clearly unconstitutional.

Yours very truly,

ALBERT J. GALEN,

Attorney General.