

Assessment, Equalization of. Notice, Of Increase of Assessment. Taxation, Increase of Assessment for.

An increase of assessment without notice to the taxpayer is void.

December 2nd, 1912.

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

Dear Sir:

I am in receipt of your letter of the 29th ult., relative to certain assessment matters in your county.

It appears that in the spring of 1912 the Floweree Cattle Company, and others, made return to the assessor of your county of certain cattle owned by the parties, and the parties making their return gave their address as "Lowry, Montana"; that thereafter, in May, 1912, notice was addressed to these parties at Lowry, Montana, of the amount of taxes due on the assessment levied against the stock so returned by them, the parties owning no real estate in the county; that thereafter, in July, 1912, the county board of equalization determined to raise this assessment by adding other stock thereto, and that notice of such raise was addressed to the parties at Floweree, Montana, that this notice was registered, postmarked "Glasgow" on July 26th; was received at Floweree, where it was held until October 1st, 1912, and then forwarded to Lowry, reaching the Lowry postoffice on October 1st, 1912, and was a notice to the parties to appear before the board on August 10th, 1912, and present any objections they might have to such increased assessment. It thus appears from the statement that although the taxpayers had given their address as Lowry, Montana, yet, through some error, this notice of the increased assessment was sent to "Floweree, Montana," and did not reach the taxpayers' address until October 1st, 1912, some fifty days after the board's final action. It therefore appears that the taxpayers had no notice whatsoever of this proposed increase of their assessment.

Sec. 2581 of the Revised Codes, relating to the notice which must be given to the taxpayer, is as follows:

"But the clerk must notify all persons interested by letter deposited in the postoffice, post paid, addressed to the person interested, at least ten days before action is taken of the day fixed when the matter will be investigated."

In *Western Ranches v. Custer County*, 28 Montana, 278, the court having under consideration Sec. 3789 of the Political Code of 1895, which is the same as Sec. 2581 of the Revised Codes of 1907, held that the ten days notice therein provided is jurisdictional and must be given, and that any action without the giving of such notice is wholly void.

The same holding is made in *Matador Land & Cattle Company v. Custer County*, 28 Montana, 286, and in *M. O. P. Co. v. County Treasurer*, 32 Montana, 480.

I must, therefore, hold that the action of the county board of equalization in increasing this assessment under such circumstances was without jurisdiction and is void.

Very truly yours,

ALBERT J. GALEN,

Attorney General.