

Assessment, Reduction of. Reduction, of Assessment.

Facts examined and held that board of equalization did not exceed its jurisdiction in ordering the decrease of the assessment.

November 10th, 1913.

Hon. A. H. McConnell,
County Attorney,
Helena, Montana.

Dear Sir:

On the first instant you addressed a letter to this office requesting an opinion as to the validity of the action of the board of county commissioners of Lewis and Clark County, sitting as a board of equalization, in reducing the assessment made by the county assessor of your county upon the property of the hotel investment company, a corporation, known as the Placer Hotel, located at Helena, Montana. From the statement of facts, I gather that this property was assessed at one hundred forty-nine thousand, three hundred dollars, which assessment included the real estate and the improvements thereon. That on the 9th day of August the board of county commissioners, sitting then as a board of equalization, was petitioned to reduce the assessment of the real estate and improvements to one hundred thousand dollars, the application for the reduction being accompanied by the affidavit of N. B. Holter, president of the said corporation. It appears that the total investment of the company to March 1st, 1913, for real estate and improvements thereon was two hundred fifteen thousand, six hundred dollars, but that the reduction asked for from the assessment as returned by the assessor was sought upon the ground that the said property was a public enterprise, and was non-productive in character, yielding an annual net income of approximately fifteen hundred dollars.

The reduction as prayed for having been made, and the corrected assessment extended upon the assessment roll, and the same being now beyond the jurisdiction of the county assessor, the query is as to whether this action of the board of equalization may be contested and set aside and the owners of this property compelled to pay taxes on the assessment as returned by the county assessor.

I have given this matter careful consideration and from the facts as they are presented it appears that the board of equalization had jurisdiction of the subject matter, and under the law were within their rights to receive and consider the petition and affidavit of the company, and had jurisdiction to reduce the assessment. There is no intimation that any fraud or malice was used or practiced, either by the officers of this company, nor by the board of equalization sitting as such. The mere fact that the investment or outlay of the company upon this property was much greater than the amount for which the property was assessed is of itself and standing alone not sufficient even to suggest fraud, for this property, even conceding that its original cost was as stated, can not be considered to be of that value in the absence of evidence showing it to be so, for as said by our supreme court in *Danforth v. Livingston*, 23 Mont. 559:

"The value of property is a matter of opinion, and there must necessarily be left a wide room for the exercise of this opinion. Absolute accuracy cannot always be attained. Courts cannot be called upon, in every instance, to settle differences of opinion in this regard between the assessing officer and the property owner. Otherwise courts would be converted into assessing boards, and, in assuming to act as such, would usurp the powers lodged elsewhere by the lawmaking branch of the government."

The same case is authority for the proposition that we have no statutory provision allowing any appeal from the actions of the board of equalization, and this is true at present. It is also pointed out that it was clearly the legislative intent to make the actions of these boards final, when acting within their jurisdiction and to deny to the courts the power to review their judgment, or to assume supervisory control over their proceedings, and that courts will not interfere with the actions of these officers to correct errors of judgment.

I am, therefore, of the opinion that in the absence of a showing that the board acted fraudulently or maliciously, their action is conclusive, and you are so advised.

Yours very truly,

D. M. KELLY,
Attorney General.