

Board of County Commissioners, Authority of to Refund Taxes. Erroneously Collected on Certain Mortgages. Mortgages, Authority of Board of County Commissioners to Order a Refund of Taxes Erroneously Collected on Certain Mortgages. Taxes Erroneously Collected, Authority of Board of County Commissioners to Refund.

The board of county commissioners is vested with authority to make corrections of any errors in the assessment and collection of taxes, but in the exercise of this authority, the board, in its discretion, may refuse to order a refund unless the evidence is positive, direct, and certain, that a satisfaction of the mortgage has been actually filed for record in the office of the county recorder prior to the time the order for refund is made.

February 26th, 1913.

Hon. Joseph A. Edge,
Chairman Board of County Commissioners,
Kalispell, Montana.

Dear Sir:

I am in receipt of your letter of the 17th inst., submitting the question:

“As to the authority of the board of county commissioners to refund taxes collected on mortgages of record when satisfactory proof is shown that the mortgages were satisfied prior to the first Monday of March.”

Chapter 135 of the Session Laws of 1909 provides for the payment of taxes under protest, and a subsequent action to recover the money so paid, but in addition to this provision relating to the payment under protest, Sec. 2669, Revised Codes, provides:

"Any taxes, percentum and costs paid more than once or erroneously or illegally collected may by order of the board of county commissioners be refunded by the county treasurer," etc.

It would appear that if the tax payer desires to compel the repayment to him of taxes paid, he must comply with the provisions of said Chap. 135, but that under the provisions of the section last above referred to, he may, notwithstanding the fact that he has not paid under protest, submit to the board of county commissioners the question as to whether the tax paid by him was erroneously or illegally collected, and that the board, after a full hearing, if it determines that such tax was so erroneously collected, and that it is a case where the money should be refunded, may order the treasurer to refund the same. So far as the tax payer is concerned this seems to rest wholly in the discretion of the board. It appears to be the meaning of the law that the board of county commissioners should be vested with authority to make corrections of any errors that may creep into the assessment and collection of taxes, which had escaped the notice of the board of equalization or the assessor. The burden of proof in all such cases, however, is decidedly with the party who claims the refund. This question and collateral questions were heretofore considered by this department in an opinion given to Hon. W. L. Ford, county attorney at White Sulphur Springs, Montana, on September 6, 1911, and is reported in Opinions of Attorney General, 1910-12, at page 256 et seq. The power and authority of the board of county commissioners under similar statutes is also discussed at length in

Multnomah County v. Title Guar. & Trust Co. 80 Pac.
(Ore.) 409.

In the exercise of this authority, however, a board may well refuse to order the refund unless the evidence is positive, direct and certain, and that a satisfaction of the mortgage has actually been filed for record in the office of the county recorder, prior to the time the order for refund is made. It is the duty of the assessor to list the unsatisfied mortgages for assessment. (Sec. 2573.) It is also the duty of the mortgagee to execute a satisfaction of the mortgage when it is paid. (Sec. 5755.) If he has failed to discharge this duty the fault is with him. Of course, a case might arise where he had actually executed the satisfaction, and it had not been put on record by reason of the fault of the mortgagor. The party assessed always has notice of his assessment, and he has the opportunity to appear before the board of equalization, where any error might be corrected; hence, all these matters considered, these applications for

refund of taxes call for the exercise of sound discretion on the part of the board, and the presumption is always strongly in favor of the regularity and legality of the tax.

Very truly yours,

D. M. KELLY,
Attorney General.