

Counties, Qualification of County Raised from Lower to higher class. County Commissioners, Authority to Rescind Order Declaring County of Certain Class.

Authority of the Board of County Commissioners to rescind an order made by it, declaring the county to be one of a higher class, considered and discussed. See opinion.

December 23, 1914.

Hon. Frank P. Whicher,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I am in receipt of your letter of the 14th inst., submitting the question:

“Has the Board of County Commissioners the authority at this time to rescind the order made by it in September, 1914, declaring the county to be a county of the Fifth Class instead of one of the Sixth Class?”

Under the provisions of Sec. 2973, Revised Codes, before the Board can legally declare the county to be one of the Fifth Class it must have an assessed valuation of more than Eight Million Dollars. If it has not the requisite assessment the Board has no authority whatsoever to make the order. Hence, if the Board should ascertain that through error, either clerical or ministerial, or by mistake in transcribing records, the valuation of the county was acted upon as being in excess of Eight Million Dollars when in fact it was below Eight Million Dollars, then the order of the Board is void for want of jurisdiction, and such order may now be rescinded, but the Board cannot now sit as a Board of Equalization and readjust the valid assessment of the county. Under the provisions of Sec. 2975, such order of the Board does not take effect until the first Monday in January, hence there is time for the Board to meet and rescind its order, if it so desires, and there is also time for any tax-

payer to institute an action in court for the purpose of rescinding the order of the Board and enjoining it from putting such order in operation on the ground that the Board had no jurisdiction for the reason that the assessed valuation of the county was less than Eight Million Dollars. An action in court is perhaps what the matter will finally resolve itself into and will be the most satisfactory solution of the question, for the order of the court will be binding and effective.

The question of fact involved must, of course, be determined from the records there, and the question as to whether or not certain entries presented to the Board were error are also questions of fact.

I can go no further than to outline the ultimate authority of the Board.

Yours very truly,

D. M. KELLY,

Attorney General.