

**State Tax Commission, Power and Authority of. Assessor,
Rights of.**

The State Tax Commission has the power and authority to fix the valuation of all property, and the rights of the Assessor are subordinate thereto.

The powers of the State Tax Commission may be extended by legislative enactment, and no constitutional amendment is necessary.

January 7, 1915.

Hon. S. V. Stewart, Governor,
Helena, Montana.

Dear Sir:

In a recent communication you requested this department to investigate the proposition as to whether the existing law relating to the State Tax Commission may be amended by the Legislature, so as to make it thoroughly effective, or whether a constitutional amendment will be necessary to bring about the desired result.

The question presented has been set at rest in this state, in my judgment, by the decision in the case of *Missouri River Power Company*

vs. Steele, 32 Mont. 433, in which case it was held that in the matter of legislation the people, through the legislature, have plenary power, except in so far as prohibited by the Constitution, and one denying the authority in any given instance, must point out distinctly the particular constitutional provision limiting or prohibiting the power exercised; that the legislature may not enact any law in conflict with constitutional provisions defining the duties of county officers, but so far as such duties are not prescribed by the constitution they may be by legislative enactment, and it was accordingly held that in creating a board of appraisers to fix the valuation of real property for the purpose of assessment, under the provisions of Section 3698, of the Political Code of 1895, as amended by the Act of March 3rd, 1897, the legislature was acting within its authority. The section prior to its repeal (Chapter 1, Acts 1903), reads as follows:

"That in all counties in the state of Montana which now have, or those which may hereafter acquire, a total assessment of eight million dollars or more, the judge of the district court, or if there be two judges in the district then the senior judge of said district court shall on or before the second Monday of February of each year, designate three reputable citizens who shall be residents and taxpayers in the county for which they are appointed, who shall constitute a board of appraisers whose duty it shall be to fix valuation of real estate in the county for the purpose of assessment by the county assessor, which valuation so fixed by said board of appraisers shall constitute the value or 'true value' of such real estate. * * * The assessor, in making up his assessment list of said estate, is hereby prohibited from assessing any greater or less value upon any piece of real estate than that so fixed by said board of appraisers. * * * It shall be the duty of the county assessor to attend the meeting of the board of appraisers and give such board all the information in his possession concerning property to be assessed and its valuation."

In the opinion of the Supreme Court, it is pointed out that the duties of the assessor are not defined by the constitution, and that in clothing the board provided for, with power to fix the valuation of real property in the first instance, no provision of the constitution was contravened, for there is no merit in any claim that a taxpayer has the right to have his property taxed upon a valuation made by the assessor.

Article XII, Section 15 of the Constitution provides for county boards of equalization, and makes it the duty of such boards to adjust and equalize the valuation of property within their respective counties, and to perform such other duties as may be prescribed by law. It will thus be seen that the functions of the county board of equalization is to adjust and equalize assessments, not to fix or make them in the first instance.

Except in so far as the county boards of equalization have jurisdiction in the premises, under the constitution (See *Danforth vs. Livingston*, 23 Mont., 558), the power of the legislature to vest in the State Tax Commission the right to fix the valuation of all property subject

thereto for the purposes of taxation, is plenary, and the rights of the assessor subordinate.

In my judgment, the decision of the court in Missouri River Power Company vs. Steele, supra, is based upon sound principals, and would not be deviated from were the same or analogous questions again presented to the court for consideration. I am therefore, convinced that if the powers of the State Tax Commission are to be extended, so as to make them thoroughly effective, the same may be done by legislative enactment, and that no constitutional amendment is necessary. It will be noted, the statute construed by the Supreme Court was one providing for a county board of appraisers, but the principles announced would apply with equal force to a State Board, for it is the settled law in this state that a county is but a political subdivision of the State, and is subject to legislation, regulation, and control, except in so far as restricted by the state constitution.

Yellowstone Co. vs. First, etc. Savings Bank, 46 Mont. 439.

Yours very truly,

D. M. KELLY,

Attorney General.