Land Classification—Timber and Stump Land—Contract of County in Excess of $10,000.00 Therefor—Contract, Must Work Be Done By—What Lands to Be Classified—Classification Fund—Warrants.

Classification of stump and timber land heretofore made may be adopted.

Contract for classification of work even if in excess of $10,000.00 does not violate constitutional provision.

Classification work is not required to be done by contract.

Lands not subject to taxation should not be classified.

Warrants issued as provided in said Act should be registered and paid as taxes are collected.

Helena, Mont., June 4, 1919.

Mr. Leonard Goodwin,
County Attorney,
Hamilton, Montana.

Dear Sir:

I have your letter of recent date submitting for my opinion the following questions in connection with land classification bill passed by the last legislature, Chapter 89, Session Laws 1919:

> "1. Would the county be permitted to take the classification of the timber and stump land already made and have a new classification of the balance only?"

I understand that a few years ago the board of county commissioners of your county caused all timber land in your county to be cruised and an estimate made of the timber growing thereon. If this will give you all of the information and data required by the rules adopted by the State Board of Equalization I know of no reason why this classification may not be adopted for such land. The rules of the State Board of Equalization require that timber and stump land must also be classified either as grazing or agricultural land, and it is possible that the classification already made may only show the character and quantity of the timber, and not the character of the land as to whether it is grazing or agricultural. If such classification only shows the quantity and quality of the timber I know of no reason why such classification may not be adopted and the land simply reclassified to determine whether it is also grazing or agricultural land. If the cruising and estimating was properly done there is no good reason why the county should be put to the expense of having the same work done over again.

> "2. Can the board let a contract for the entire work for a sum in excess of $10,000.00 without submitting same to a vote of the electors?"

Section 5 of Article 13 of our Constitution contains the following provision:

> "No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000.00) without the aproval of a majority of the electors thereof, voting at an election to be provided by law."

This constitutional provision is both mandatory and prohibitory, Sec. 29, Art. 3 Constitution, and if the classification of lands in a county under Chapter 89, Session Laws 1919, constitutes a single purpose and the cost thereof will exceed $10,000.00, then, unless the same is authorized by some other constitutional provision, such indebtedness or liability cannot be incurred without the approval of a majority of the electors voting at either a special or general election on such question.

Whether or not the same does constitute a single purpose is not entirely free from doubt. The incurring of an indebtedness for a court house, the construction of the building alone costing less than $10,000, but, together with the purchase of the ground and the preparing of plans and specifications and employment of an architect, exceeding $10,000.00 has been held to be the incurring of an indebtedness for a single purpose and falls within the constitutional prohibition (Hefferlin vs. Chambers, 16 Mont. 349, 40 Pac. 787). And likewise the incurring of an indebtedness for a bridge, the construction of which will not exceed $10,000, but with the aproaches will exceed $10,000, has been held to be the incurring of an indebtedness for a single purpose and within the constitutional prohibition (Jenkins vs. Newman, 29 Mont. 77, 101 Pac. 625). And the issuing of bonds or warrantas by a county for the purchasing of seed grain for farmers, where the amount furnished to any one farmer will not exceed $10,000 but the amount furnished to all exceeding that amount has been held to be the incurring of an indebtedness for a single purpose (State ex rel. vs. Weinrich, 54 Mont. 390, 170 Pac. 942). On the other hand the expenditure of more than $10,000.00 in any one year for the care of the county poor is not the incurring of an indebtedness or liability for a single purpose (Panchot vs. Leet, 50 Mont. 314, 146 Pac. 927). And our statutes requiring the board of county commissioners to enter into contracts for county printing and supplies it would hardly be contended that the question of entering such a contract, or incurring such an indebtedness must be submitted to the electors before such contract could be entered into or such liability incurred should exceed $10,000 in any one year. So also with the creation of new counties and the transcribing of their records it would never be insisted that the question of incurring such an indebtedness, if the cost thereof should exceed $10,000.00, must be aproved by the electors of the new county. Likewise with the expenses connected with the holding of every general election, yet it is inconceivable that it was the intention of the framers of the Constitution to require the incurring of an indebtedness for such a purpose to be first aproved by the electors of the county. Yet, strictly speaking each of these is the incurring of an indebtedness or liability for a single purpose. Whether this constitutional provision applies seems to depend entirely on whether the indebtedness or liability is incurred by a county in the administration of governmental affairs, or whether voluntarily created by a county in its corporate character and as an artificial person. In the case of Grant Co. vs. Lake Co., 21 Pac. 447, the supreme court of Oregon said:

"The constitutional inhibition that no county shall create any debts or liabilities which shall singly or in the aggregate exceed the sum of five thousand dollars, except to suppress insurrection or repel invasion, does not imply that all debts and liabilities against a county over and above that sum are necessarily obnoxious to that provision. To justify the court in finding the said conclusion of law, it should have found that the county created the indebtedness. Counties do not create all the debts and liabilities which they are under; ordinarily such debts and liabilities are imposed upon them by law. A county is merely a main agency of the state government, a function through which the state administers its governmental affairs,—and it had but little option in the creation of debts and liabilities against it. It must pay the salaries of its officers, the expenses incurred in holding courts within and for it, and various and many other expenses incurred in holding courts within and for it, and various and many other expenses the law charges upon it, and which it is powerless to prevent. Debts and liabilities arising out of such matters, whatever sum they may amount to, cannot in reason be said to have been created in violation of the provision of the Constitution referred to, as they are really created by the general law of the state, in the administration of its governmental affairs."

See also Rauch v. Chapman (Wash.) 48 Pac. 253.

Sec. 1 of Art. 12 of the Constitution says:

"The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a *uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property*," etc.

Reading Chap. 89, Session Laws 1919, it is apparent that it is intended to be, and in fact is, a regulation prescribed by the legislature for the purpose of securing a just valuation of property for taxation. Sec. 1, states the very purpose of the act, being as follows:

"It is hereby made the duty of the State Board of Equalization, not later than June 1st, 1919, to provide for a general and uniform method of classifying lands, for the purpose for which they may be valuable in the State of Montana *for the purpose of securing an equitable and uniform basis of assessment of said lands for taxable purposes.*"

While Section 6 is as follows:

"The classification herein provided shall be full, complete and accurate, and shall be used as the basis upon which land values shall be fixed for purposes of assessment and taxation."

A duty is imposed on the legislature by Sec. 1, Art. 12 of the Constitution to prescribe such regulations as shall secure a just valuation for taxation of all property and in the performance of that duty the legislature has enacted Chapter 89, Session Laws 1919, as a regulation intended for the purpose of securing a just valuation for taxation of certain classes of

property. To comply with the requirements of such regulation may compel certain counties to pay out and expend in excess of $10,000, but in so doing, such indebtedness or liability is incurred in the administration of the governmental affairs of the state and county, consequently Sec. 5 of Art. 13 of the Constitution is not applicable thereto.

I am, therefore, of the opinion that a board of county commissioners has authority to enter into a contract for the classification of lands within its county, as required by Chapter 89, Session Laws 1919, even though the cost thereof will exceed $10,000, without submitting the same to a vote of the electors.

> 3. "Can the board undertake and complete the required classification by employing men by the day or month, regardless of the fact that it is evident that the entire work will cost to exceed $10,000.00?"

Section 8 of Chap. 89, Session Laws 1919, makes it the duty of the board of county commissioners of the several counties to provide, *in such manner as they may determine*, for the classification of all lands within their respective counties, etc. There is no requirement that this work be done by contract, and it was evidently the intention of the legislature, by the use of the words "in such manner as they may determine," to leave the method or mode by which it is to be done wholly to the discretion of the boards of county commissioners, so that they may have it done under contract, or by day's work, or by deputy assessors, or by any other method or mode which they might deem proper.

> 4. "Can the board make a contract for such classification and provide in the same that at no time shall the indebtedness or liability exceed $10,000.00 over and above the amount received from the special levy provided for in said Chap. 89?"

The board may enter into any kind of a contract for the classification of lands which they deem proper, subject only to two restrictions: First, that the work be done in the manner prescribed by said Chap. 89 and the rules and regulations adopted by the State Board of Equalization, and, second, that the amount to be paid therefor is reasonable and not excessive.

> 5. "Can the board let a contract with "cost plus" or "force" provisions? Our laws contemplate the letting of contracts by boards of county commissioners by competition, that is by competitive bidding, which is practically eliminated from "cost plus" and "force" contracts.
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> 6. "It is estimated that the levy of one mill per acre would only produce between four and five thousand dollars in this county; under these circumstances could the board enter into a contract for this classification in an amount exceeding $10,000.00 but payable in three or four annual installments from the proceeds of the special levy provided for?"

Section 4 of Chap. 89, Session Laws of 1919, requires the board of county commissioners to create a fund to be known as the "Classification Fund" and all warrants drawn in payment of work and labor performed, or in payment of services rendered under any contract for the classifica-

tion of lands shall be drawn on such fund, and further requires the board to levy annually a tax not to exceed one mill upon the real property in the county for such fund. Should the cost of classifying lands in any county exceed the amount which a levy of one mill for one year will produce, the warrants issued in excess of that amount will simply remain outstanding until such time as the taxes received from subsequent levies will be sufficient to pay off the same. There is no necessity for providing in the contract, in such a case, for payment in installments extending over a term of years, but the warrants issued under the contract should be registered and called in for payment as the taxes are collected under levies made for such purpose.

The provisions and purpose of Chap. 89, Session Laws 1919, seem to be generally misunderstood in two particulars. It seems to be the general impression first, that every acre of land in a county must be immediately classified, and, second, that when this classification has been completed nothing whatever remains to be done in the future regarding classification of lands. The purpose of this act is to require lands subject to taxation to be classified for the purpose of securing an equitable and uniform basis of assessment and taxation. Many thousands of acres are included in forest reserves and such lands are not subject to taxation, hence should not be classified. Again many thousands of acres in the different counties are public lands of the United States. Some of these lands have been entered under the homestead laws but the entrymen have not as yet made final proofs or acquired title, while other of these lands have not even been entered. None of these lands are subject to taxation and will not be until the United States has parted with the title thereto, hence none of these lands should be classified while the title thereto remains in the United States. Again the state owns large quantities of land, timber, grazing and agricultural, situated in the several counties, which have not been sold, or contracted to be sold. None of these lands are taxable, hence should not be classified until such time as the state enters into contracts for the sale thereof. In other words only such land as is subject to taxation should be classified at the present time. When all lands subject to taxation have been classified, there will still remain certain work to be done in the future. The act does not contemplate one full, complete, final classification for all time, but rather a continuing classification. Lands held under somestead entries will, when final proofs are made in the future, become subject to taxation, public lands not yet entered will, in the course of years, be entered and title acquired from the United States, and state lands will, in coming years, be sold under contract, and all such lands will then become subject to taxation, and when they become subject to taxation they must be classified. Again land which may be now classified as stump or timber land may be cleared and become high class agricultural or grazing land and will have to be reclassified, while non-irrigated land will become irrigated land and will have to be reclassified. In fact many different kinds of land may change in its character so that reclassification will become necessary. However, this work of classifying and reclassifying such lands in future years will be small in any one county, and can be done through the county assessor's office at the time property is listed for taxation. The one purpose of this act is to require all property subject

to taxation to be classified, that now subject to taxation to be classified at the present time and that hereafter becoming subject to taxation to be classified as it becomes subject to taxation. I do not believe that the board of county commissioners can enter into any contract at this time for the classification of any lands not subject to taxation at the time the contract is entered into, but that it is restricted to contracting for the classification of only such lands as are subject to taxation.

Respectfully,

S. C. FORD,

Attorney General.